The incoming tide

Hollander, Jieskje

A commercial edition of this thesis will be published in summer 2013.
Title: 'Constitutionalising Europe. Dutch Reactions to an Incoming Tide.'
ISBN: 978 90 8952 139 2
Publisher: Europa Law Publishing

Design
Joost Dekker i.s.m. de ontwerpvloot

Printed by
Proefschriftmaken.nl | Uitgeverij BOXPress

Published by
Uitgeverij BOXPress, 's-Hertogenbosch

This work is part of the research programme Contested Constitutions,
which is financed by the Netherlands Organisation for Scientific Research (NWO).

The title of this work refers to the image evoked by Lord Denning MR in *HP Bulmer ltd. v. J. Bollinger SA et al:* 'But when we come to matters with a European element, the Treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back.' [1974] Ch. 401 at 418, [1974] CMLR 91 at 111.

The Incoming Tide

Dutch Reactions to the Constitutionalisation of Europe 1948–2005

PhD Thesis
University of Groningen

RIJKSUNIVERSITEIT GRONINGEN

The Incoming Tide
Dutch Reactions to the Constitutionalisation of Europe

Proefschrift

ter verkrijging van het doctoraat in de
Rechtsgeleerdheid
aan de Rijksuniversiteit Groningen
op gezag van de
Rector Magnificus, dr. E. Sterken,
in het openbaar te verdedigen op
donderdag 4 juli 2013
om 12.45 uur

door

Jieskje Hollander

geboren op 30 december 1983
te Franeker

Promotor:	Prof. dr. L.W. Gormley
Copromotores:	Dr. P.A.J. van den Berg Dr. R.G.P. Peters
Beoordelingscommissie:	Prof. mr. L.J. Brinkhorst Prof. dr. G.T. Davies Prof. dr. J. van der Harst

‘Democracy cannot be imposed on any nation […] Each society must search for its own path, and no path is perfect. Each country will pursue a path rooted in the culture of its people […].’

Barack Obama[1]

Contents

Introduction

The relationship between the Netherlands and the European integration process is under pressure. In the past few years, the Netherlands more than once adopted an obstructionist attitude on the European stage. In the negotiations leading up to the Treaty of Lisbon the country stood firm in its demand to drop all symbolic references to a future statelike character of the European Union, i.e. the label of a constitution, the flag, and the anthem. Afterwards the Dutch government became notorious for its insistence on stricter admission criteria for candidate Member States, its prolonged resistance against Serbian accession to the EU, and later for its initial inflexible attitude in the Greek debt crisis. Moreover, current political debates in the Netherlands on immigration and asylum issues –think of the discussion about the initiative of Geert Wilders' *Partij van de Vrijheid* (PVV) to set up a website where trouble caused in Dutch cities by workers from Middle and Eastern Europe can be reported – have led to criticism from European institutions about the Dutch observance of the European Convention on Human Rights and of Dutch loyal cooperation with Europe in general.[2]

These recent examples of friction between the Netherlands and the EU have, both at home and abroad, been regarded as deviations from an old trend. From the early start of the process of European integration soon after World War II, the Netherlands got known as one of its most loyal supporters. Having started out as one of the six 'Founding Fathers' of the European Coal and Steel Community (1952), the country earned the reputation among its partners – and for a long time prided itself on it as well – for assuming a constructive role in the negotiations on the consecutive European treaties that brought the integration process further. '[In European negotiations],' as a key-player in the field of European integration on behalf of the Dutch Ministry of Finance phrased it, 'the Netherlands was pre-eminently aiming at trying to get results. […] There had to be a result. It would be pleasant if we also thought it to be a beautiful result, but there had to be a result.'[3]

The referendum on the Treaty Establishing a Constitution for Europe (hereafter: the European Constitution) held on 1 June 2005, marked a dramatic turning point in the driving force of the Netherlands

in matters of European integration. After almost six decennia of progressive European integration in which the concept of a European economic, legal and political community had found its way into the constitutional core of the Netherlands, the Dutch people indicated in unmistakable terms that a limit had been overstepped here: a 61,6% majority of the voters rejected the treaty that the Dutch government had signed as a matter of course and that had been initially welcomed by a great majority in the Dutch parliament. A shock went through Europe. How was it possible that the Netherlands, previously best in the European class, had voted against this next step in the integration process? Bearing in mind the Dutch ratification of the Treaties of Rome (1957), the Treaty of Maastricht (1992) and agreement on the declaration of Laeken on the Future of Europe (2001), Dutch support for the constitutionalisation of Europe had seemed self-evident.[4] In the referendum on the European Constitution, however, the people of the Netherlands put an end to that expectation. A shock also went through the Hague; the residence of the Dutch political elite. Here the verdict revealed, first and foremost, a breach of confidence between the political elite of the Netherlands and the people this elite was supposed to represent. In order to bridge the gap and to avert a crisis of political legitimacy, in a plenary debate in parliament on 2 June – the day following the referendum – all political parties that had initially expressed their enthusiasm about the Constitutional Treaty, retraced their steps. Following the voice of the people, the Treaty was rejected in parliament.

This apparent quick fix, however, could not prevent years of discomfort to follow. The post-2005 quarrels between Europe and the Netherlands show that the familiar relationship has been disturbed. And also on the national level, repair of the damage turns out not to be easy. In its attempts to make up for the event of 1 June 2005, the governmental elite has taken a more critical attitude towards the process of European integration, but, in doing this, has also passed over the core of the matter. Swayed by the political issues and dynamics of day to day politics, the fundamental question of how the gap in the field of European integration between the Dutch electorate and its political representatives had come into existence, is left out of consideration. What had happened in the almost sixty years of apparent Dutch consensus on the progress of European integration?

Although immediately after the referendum various analyses on the causes of the result of the referendum were published, the historical perspective is still lacking. Time and again the Dutch rejection of the European Constitution was ascribed to medium and short term

causes. Short-sighted nationalism as a reaction to globalisation and immigration – fanned by the rise of populist politicians such as Pim Fortuyn and Geert Wilders –, fear of the accession of Turkey to the EU and general feelings of discontent with the Balkenende government were mentioned.[5] Historical, long term causes, however, were not taken into account. The studies referred to are moreover alike in their attempt to explain the referendum outcome through focusing on the communication between the government and society at large and (changes in) the public debate: i.e. the interaction between the political and public domain. This implies that, hitherto, the debate and decision making cycle as it had taken place *within* the national political domain were largely left out of consideration as an element that might have contributed to the course of affairs.

Looking at the broader field of publications of recent years in which the struggles for deeper (political) integration on the EU level are addressed, a similar lack of attention can be observed for the interaction between government and parliament on the national level as a relevant factor to explain the issues at stake. In most publications the focus is on decision making at the European level and the problems encountered here. In this context the absence of a European *demos* has been a returning topic since the second half of the 1990s.[6] This also holds good for the resulting (im)possibilities for the European institutions and the governments of the Member States to establish a satisfactory democratic connection between the EU and the national level of decision making.[7] Approaching the identified problems from a European rather than national perspective and leaning heavily on fairly abstract (political) theoretical notions, these studies have failed to shed light on how in political *practice* the peculiarities of *national* democracy have contributed to the problems recently encountered in the process of unifying Europe.

Filling the gap

Although it is not contested here that in the Netherlands short-term factors contributed to the widening of the gap between the electorate and their political representatives, as a part of the NWO funded research project *Contested Constitutions,*[8] this work aims at showing that the outcome of the Dutch referendum of 1 June 2005 was the result of a long term process. Such a long term perspective, the study exemplifies, is essential in moving beyond the superficial explanations that have been given so far. Moreover, this research wants to demonstrate that for truly understanding the problems that the EU and its member states are currently confronted with, a deep-dive into the history of political

practice in the member states is essential. Understanding national political decision making and how this is shaped by a national political culture, constructed from conventions, presuppositions, convictions and beliefs shared by the main actors in the political domain, is crucial for understanding how a political elite could structurally vote in favour of further integrating Europe, whereas in society at large more and more fundamental questions and doubts arose in the course of time.

In line with the aims of this work, this study concentrates on the political system – also referred to as the polity – in the Netherlands. More specifically, it analyses how, within this system, decision making on European integration came about and examines the considerations leading up to it. The key actors within the Dutch polity are the government, parliament and the Council of State in its role as the highest advisory board in the Netherlands concerning legislation. Their interaction, leading up to political decision making, is best traced in the parliamentary debates and their written preparations on the successive steps in the process of European integration. By examining these debates and accompanying documents an insight is gained into the preferences of the government, the way these were presented in the political arena, the deliberations of the various political parties regarding (the presentation of) these preferences and the extent to which popular sentiments, expressed in the public debate, played a role in political decision making. The broader context in which the parliamentary debates took place is included in this study by structurally placing these debates against the background of the relevant historic circumstances of the time and the concurrent state of the public intellectual debate in the Netherlands on the developments in the field of European integration. Lastly, in order to make the picture complete, the findings from the primary parliamentary sources and literature are complemented with an oral history perspective, i.e. the personal recollections of (former) key-players in the field of Dutch European politics and policy of what ideas, premises, convictions, and beliefs motivated the Dutch political elite in their dealing with the process of European integration. These recollections were obtained in a series of semi-structured interviews.

Selection of sources

Following from the objective to reveal the deep and historical undercurrents in Dutch political culture that contribute to an understanding of the outcome of 1 June 2005, the parliamentary debates are central in which the relation between the historically rooted national political culture and political identity of the Netherlands

on the one hand, and political decision making in the process of European integration on the other, becomes visible. In this regard, all the parliamentary debates in the Netherlands on the 'great' European treaties and decisions (i.e. treaties and decisions that significantly boosted the process of European integration) qualify.[9] These debates, which are preserved in the form of written preparations and verbatim minutes and that run in accordance with an established pattern,[10] are rich and relevant sources for this study, since they contain the 'raw' and unedited exchange of thoughts of the Dutch polity on the subject of European integration and – along the way – constitutionalisation. As such, these debates reflect the unadulterated political, ideological and rhetorical battles that have and have not been fought in the Dutch parliament with regard to the process of European constitutionalisation. Both issues of fundamental conflict and consensus with regard to this process can be deduced from these debates. Thus, essential concords and discords of the Dutch political community can be traced. They bring us closer to an understanding of the development of Dutch political culture and identity as a whole and how these related to political decision making on European integration.

It will be demonstrated in this study that the parliamentary debates that evolved around the relationship between the Dutch constitution and the process of European integration are particularly interesting. The starting point of the *Contested Constitutions* project, is that the text of a national constitution reflects the consensus of the political community – at a certain point in time – on who belong to it and their mutual roles and relations: who has the power, who controls the power and what are the rights and duties of those belonging to the community. A constitution can be considered to be a 'solidified' debate on the national political identity. The moments when this debate becomes 'liquid' again reveal a (latent) change in the identity of the political community. Following from this theoretical line of thought, the instances in the process of European integration that opened up the debate in the Dutch parliament on the constitutional identity of the Dutch polity are revealing for how this process affected it. These particular debates and the argumentative structures used in it, are indicative then for if, how and to what extent the Dutch political community felt the need and desire to adjust its political identity under influence of the process of European integration.

In addition to the relevant *parliamentary* debates, the debate in the Netherlands on the process of European integration among public intellectuals is included in the analysis. Public intellectuals are situated between politics and the wider society. Although their exact influence

is difficult to measure, it is clear that in their role as public experts they translate political action into public opinion on it. The opposite holds true as well: politicians and policy makers are influenced by opinion makers. In the various chapters of this study, the public intellectual debate on European integration is reconstructed by the way it was held within public organisations, the world of scholars and debating clubs, by analysing it on the basis of publications. All sorts of people of diverse backgrounds had their part in it. Not only jurists, economists, journalists, sociologists, political scientists and a few historians but also (ex-)politicians in different capacities gave their opinion. They expressed their ideas as idealists, as political advisers, as scholars, independent publicists or orators, reacting to developments in politics or to each other's contributions. What binds them is their active reflection on the Dutch political debate on European integration. By doing so they became its fellow designers at the same time and one of the driving forces behind this debate as it was held over the past sixty years.

Incorporating in this study the contributions of public intellectuals reflecting the main concerns in the successive stages in the process of European integration was crucial in order to identify the broader field of key forces in which the Dutch government and parliamentarians had to take their decisions and to discover whether and to what extent the political elite of the Netherlands considered the public debate in its decision making. In this way the causes and time of origin of the much debated gap between the national citizens and the political class of the Netherlands in the field of European integration can be more closely established. For that reason, as stated, in the historic sketches that structurally precede the analyses of the relevant parliamentary debates, the opinions and analyses of the Dutch public intellectuals with regard to the consequent steps in the process of European integration are discussed.

The last category of sources that should be mentioned here are the fragments from a series of over twenty interviews, held with Dutch participants who played a role in the European integration process. They – former civil servants of various ministries, parliamentarians, members of government[11] – held key-positions within the political and/or governmental domain in the Netherlands in one or more key-episodes in the history of European integration. In the selection of the interviewees, getting a balanced picture, both with regard to the various periods in the process of European integration as well as the various actors and institutions involved, within the limited time available, was decisive. In particular with regard to the earliest years, the selection

of interviewees was naturally bound by a more restricted presence of persons able and willing to cooperate.

A Rhetorical Approach

For the analysis of the parliamentary debates, a rhetorical approach has been chosen. The main thesis of the *Contested Constitutions* project is that political language is constitutive for the identity of the polity as it crystallizes out in the polity's constitution.[12] From the premise that political identity comes about in political discourse, the use of insights and concepts from the field of rhetoric follows organically. In rhetoric, the instruments are found to approach and scrutinize the exact relation between political identity and political discourse.

In this study, the analysis concentrates on the *discursive constructs* with which the Dutch political elite, since 1948, has spoken about the identity of the polity in relation to the process of European integration. Logic, *topoi,* metaphors, (historical) narratives, distinctions and rhetorical dissociations that were used by Dutch advocates and/or antagonists of European integration in national debates on the process, are identified and analysed in order to reveal the ideas, premises, convictions and beliefs of the Dutch political elite that stirred it in its political decision making.

The rhetorical theory employed to analyse the content of the debates is derived from classical rhetoric (such as the Aristotelian concepts of logic and rhetorical commonplaces *[topoi]*),[13] but also richly from the modern rhetoricians Chaim Perelman (1912-1984), Lloyd Bitzer (1931-) and Maurice Charland (1953-).[14] In his well-known article on the 'Peuple Québéçois' (1987) the latter distinguished the specific rhetorical current of 'constitutive rhetoric'. Here, Charland demonstrated how advocates of the political sovereignty of the people of Quebec 'addressed and so attempted to call into being a 'peuple québécois' that would legitimate the constitution of a sovereign Quebec state.'[15] By rhetorically emphasising and elaborating on the traits and characteristics of this people, he explains, its advocates, in fact, constituted it. Charland can be seen as a main defender of the conceptual idea that forms the starting point of this study: political identity is constructed in rhetorical discourse. He has made this notion operational by defending that in rhetorical discourse the narrative is a main instrument for claiming and bringing about group identity. Effective constitutive rhetoric, Charland contended, starts with a story of a common past, that functions as a basis for defining a political community in the present while summoning it to act in correspondence with its political identity. Thus, Charland's theory yields a clear focus

in analysing the various Dutch debates on European integration. Are they attempts to constitute a political identity? And if so, to what end, by means of what narratives and by whom? The study will show that constitutive rhetoric played a role on various levels. On the European level, narratives were constructed in attempting to develop a European polity, whilst on the national level also various, conflicting narratives were constructed in which a (dis)connection of the identity of the Dutch polity with a European polity was argued.[16]

Where Charland's insights are essential for understanding how identities are created, Chaim Perelman describes the process and techniques by which this objective can be reached in greater detail. Perelman became known for developing the theoretical school of the *new rhetoric*. He contended that the traditional focus on formal logic in argumentation theory – i.e. a focus on arguments that pretend to reflect 'objective reality' or 'true knowledge' – is not sufficient to clarify the effectiveness of rhetorical utterances and thus eventually, to explain choices and decisions taken by the audience. An argument is sound if it is accepted by the public it was aimed at, independent of its relation to reality. Starting from these notions, He developed, among other things, a supplement to the classical rhetoric in which he distinguished between arguments based on *association* and arguments based on *dissociation*.[17]

With regard to the constructive aspects of association, Perelman differentiated between quasi-logical arguments, arguments *based on* the structure of reality, and arguments *that structure* reality. Quasi-logical arguments – it is in the word – are arguments that suggest a logical connection between opinion and argument, which makes the opinion inevitable. In other words, they start from the notion that what is logical, is also true. But, on the basis of his belief in the ambiguity of language, Perelman stressed that this connection between logic and truth is a creative construct and often mere appearance. By smartly choosing his words and arguments by, for instance, defining terms in a certain manner, by analysing in a certain direction, or by claiming transitivity ('the friends of my friends are my friends'), a creative speaker can construct logic that is not actually present.[18] Having a sharp eye for quasi-logical arguments in the Dutch debates on European integration is useful for reaching an understanding of what ideas, starting points and expectations with regard to the process of European integration were presupposed and accepted by the Dutch political community as logical and self-evident.

Arguments based on the structure of reality, Perelman argued, make creatively use of factual liaisons, perceived as 'real' or 'true' by the

audience. He distinguished the sub-categories of liaisons of *succession* on the one hand, and liaisons of *coexistence* on the other. Within the context of this research the first category is the most relevant.[19] Typical of the arguments from this category is that they start from a view of the connection between cause and consequence or objective and means. Constructing such arguments, a rhetorician appeals to the consequences or the objective in order to justify his view. The *pragmatic* argument is a typical example of an argument of succession, based on a certain view on the relation between means and objective: in order to effectuate a desired consequence, something should be done or refrained from.[20] Arguments of succession in general, and pragmatic arguments in particular, as will be demonstrated in this study, have been lavishly used in the various debates in the Netherlands concerning European integration. The analysis of these arguments demonstrates the view of the Dutch political community on what was worth striving for in this process and what was seen as a useful and necessary means in pursuing that objective. In other words, the perception of the Dutch political community of the road leading towards the desired goal is revealed in the arguments of succession that this community applied and accepted in its debate on the process of European integration.

The last category of arguments based on association, as distinguished by Perelman, are those *that structure* reality. According to him, rhetoricians apply such arguments to produce order in a chaotic reality. Typical examples are arguments based on example, analogy or metaphor. They all have in common that a certain new and intangible situation is represented as equal to or in line with another, more familiar situation. All are rhetorical constructions which, considered in their mutual connection, work towards a coherent narrative (see Charland). In arguments that structure reality, proposed perspectives and/or decisions are validated on the basis of the perspective and decisions applied in – what are perceived as – 'similar' situations in the past. Thus, arguments used to structure reality yield insight in how a rhetorician proposes his audience to perceive a certain situation. The adoption or rejection of the (majority of the) addressees of this proposal is indicative then of how they wish to perceive reality. In doing so, core elements of the mindset of the audience are uncovered.[21]

For the category of arguments based on *dissociation,* the same holds good: the dissociations used, and their being well received or not, are indicative of aspects of the mindset of the polity. The construct that is called a rhetorical dissociation, Perelman argued, is a means usually applied by those who encounter 'incompatibilities in ordinary thought' when making their argument.[22] Instead of conjuring away

the difficulty by pretending not to see it – an adequate way of solving incompatibilities in thought – Perelman claimed that an orator can – and often will – try to resolve the inconsistency in a 'theoretically satisfying manner' by creatively 're-establishing a coherent vision of reality.' To this end 'he will most often attain such a resolution by a dissociation of the ideas accepted at the start.'[23] A typical example of a dissociation, quite commonly used in legal reasoning, is that the 'letter of the law is not the same as its spirit.' By dissociating spirit from letter, a margin of interpretation is introduced that – if accepted by the audience – benefits the rhetoric latitude of the orator. The reception of a dissociation by an audience contributes to an understanding of what ideas fit within the mindset of the specific audience and those that do not.

In addition to Charland's notion of 'constitutive rhetoric' and Perelman's analytic tools to scrutinize the constructed narratives, Lloyd Bitzer's insights on the relevance of the 'rhetorical situation' form the basis of the analyses in this study.[24] Rhetorical discourse, this American rhetorician has claimed, only comes about in relation to a 'specific condition or situation which invites utterance.'[25] By letting the qualitative content analysis of the argumentative structures in the various debates precede by an inquiry into the situational details, it is prevented that the arguments are interpreted out of context and that, by consequence, they are over- or underestimated with regard to value and meaning. Questions that are at the root of every rhetorical situation described in this study are: what was – both explicitly and implicitly – at stake in the debate? What made the debated matter urgent? What made the orator speak and what did he/she have to lose? What were the possible solutions to the matter and why did the orator chose a specific approach? What were the constraints that influenced the rhetorician and (how) could these be brought to bear on the audience? Who were involved in the matter, what was their mutual relation, how were they related to the issue at stake? How could they decide on the matter and to what extent could they affect it? Thus, the situational framework is structured, against the background of which the rhetorical content of the debate can be analysed.

So, whereas Charland provides us with a clear focus when reading the debates and Perelman's insights are essential for analysing the exact argumentative structures, Bitzer gives us instruments to map out the debates before deep diving into them. It is relevant to stress here that in this study the application of rhetorical theory is instrumental in providing a deeper understanding of how the Dutch political community has perceived the process of European integration, how this perception related to its self-perception and how the various readings

related to political decision making in this process. Validating the theory, in the sense that the debates are used in order to demonstrate that the various theories work, is not the objective of this study.

Structure of the argument

In this work it is argued that the germ for the gap between Dutch political elite and society at large, as it became manifest on 1 June 2005, was already latently present within the identity of the Dutch polity. It resulted from the ideas, premises, convictions, and beliefs, shared by a political majority and cherished as part of their group identity, on the position of the Netherlands in the wider world, the foreign policy that befitted this position, and the democratic sacrifices that were needed to guarantee it. These essential elements of what could be summarised as the mindset of the political elite, have led to crucial blind spots within the political community with regard to its approach to, and expectations of the process of European integration; blind spots that, in turn, may clarify the development of the gap between those who represent and those that were supposed to be represented.

The analysis takes 1948 as the starting point, the year of the first manifestations of the until then purely theoretical notion of European integration. It is argued that an exceptionally strong identification of the Dutch political elite with the process of European integration in its early years, eventually led to the erosion of the democratic legitimacy of the process of European integration. Though hidden at first, this process gradually became manifest in a widening gulf between the political elite that continued to support the constitutionalisation of Europe and the Dutch citizens, who were increasingly dissatisfied with national decision making on European integration. Blinded by their conviction that the process should proceed because it was a goal that purely benefitted the economic and international political interests of the Netherlands, the political leaders of the Netherlands failed to recognise the diminishing support for progressive European integration. Finally, when the Dutch people were asked to give their consent on the Treaty Establishing a Constitution for Europe, they gave a harsh verdict. They protested against European integration and called a halt to the seemingly unstoppable legal logics by which it had developed in the course of time.

The full argument is produced in six chronological chapters in which the developments in the process of European integration are discussed together with developments in the national political domain and the perception of the political elite of this process. The division into chapters, is based on the turning points in the perception of the

political and intellectual elite of the integration process and the political decisions that mark them.

In the first chapter, a study of the crucial elements of the Dutch constitutional reform of 1953 demonstrates that, based on a historically developed view on the position and role of the Netherlands on the international stage, a considerable political majority was willing to open up the Dutch constitution for the process of European integration. Subsequently, in chapters two to four, on the basis of an examination of the parliamentary debates on the coming about of the European Defence Community (1953), the European Economic Community (1957), the Merger Treaty (1965), the Single European Act (1986), the accessions of the United Kingdom (1972), Greece (1981), Spain and Portugal (1986) and the introduction of direct elections for the European Parliament (1979), it is observed that throughout the process of European integration the political majority's consensus that an attitude of fundamental openness in this process came before a strong democratic hold, was preserved, strengthened and protected. Subsequently, chapters five and six show that when from the second half of the 1980s onwards a full-dress European Union came into view, the political consensus in Dutch decision making on European integration, as it had developed since 1948, became more and more contested both in and outside parliament. The political mainstream that had held the political power for decennia since 1948, however, failed to truly and structurally act upon the growing discontent with the coming into being of a fourth administrative layer within the governing system of the Netherlands on which the Dutch citizens and their political representatives had less and less hold. Estrangement developed between a governmental elite that kept justifying ongoing European integration on the basis of a political tradition in which instrumental internationalist reasoning with regard to economic and security interests came before national political sovereignty and the Dutch people who increasingly desired to prioritise otherwise. In June 2005, the governmental elite paid the price for that.

Chapter 1
The Land of Grotius 1948—1953

'The pursuit of international cooperation is rightly described in the Dutch Constitution as "building of the international legal order". It is from this perspective that the country of Grotius must deal with the international problems.'

Johan Willem Beyen[26]

1. 1 Introduction

At the end of the Second World War, rebuilding international trust and relations became a main concern for the countries of Western-Europe. All heavily enfeebled by the economic and moral costs of the war, these countries were convinced that cooperation was essential in order for them to arise from their ashes. The Bretton Woods Conference (1944) and the Marshall Plan (1947) both aimed at collective economic recovery, were among the earliest initiatives to substantiate this notion. The intergovernmental organisation of the United Nations (UN) was established in 1945 to maintain international peace and justice by offering a forum for international political deliberation. Also in the field of defence, cooperation in Western-Europe was sought and found when in the years after 1945 Stalin revealed his true ambitions by flouting his Yalta promises and developing the Eastern Bloc. The establishment of the North Atlantic Treaty Organisation (NATO) (1949) was the result.[27]

The UN and NATO had in common that they were both international organisations, based on treaty law and working through consultative structures, but without any governing powers of their own. Their functioning and decision-making depended on the political will of the governments of their members; they were *intergovernmental*

organisations. But with the East-West tension growing, Stalin clearly taking no notice of any interstate agreements and the states of Western Europe finding themselves in reconstruction stress, the intergovernmental approach to international cooperation soon revealed its limitations. In reaction to the fragile political situation and the failure of the states of Western-Europe to formulate an effective answer, ideas were developed among a vanguard of Western-European thinkers and politicians to move beyond the old form of intergovernmental cooperation. The notion of Western-European unification was examined.

Plans for European unification had been discussed in Europe on and off before and during the war, but until then they had never been taken seriously as a real political option.[28] In the aftermath of the war this situation changed. An international group of European federalist thinkers, consisting also of several Dutchmen who had met in resistance movements during the war, were the first to take the initiative.[29] They found each other in their consensus that the international political system of nation states was to blame for the continent falling into war. They saw unification of Europe by means of federalisation as the way to prevent such wars in the future. Between 15-22 September 1946 they organised the conference of Hertenstein, Switzerland. Here, a shared European identity, culture and destiny were discussed. Eventually, they came up with the 'Hertenstein programme', which has been understood as 'an assertive attempt […] to convince national parliaments of the need for creating a European union on federal lines.'[30] It contained suggestions for the establishment of a European Union – the term was used already – based on the voluntary transference of national sovereign rights of the Member States, and the draft of a European declaration of civil rights. These federal thinkers put such a European Union within their broader ambition of developing a World Union.[31]

This rather academic initiative received unexpected political relevance when on 19 September – the same day as the Hertenstein programme was announced – the British opposition leader and 'war hero' Sir Winston Churchill formulated some outspoken thoughts on the future of the European continent. In his 'speech to the academic youth' held at Zürich University, he stated that the rescue of Europe was in the realisation of European unification in what, according to Churchill, might be called a 'United States of Europe'.[32] Whatever Churchill's aim with a unified Europe – it is likely that the power politician Churchill was driven by the pragmatic consideration of forming a Western-European power bloc as a counterbalance against the Soviet power, rather than by mere idealism – his appeal perfectly

matched the Hertenstein spirit. As such, it contributed to gathering momentum for the concept of European integration, which was further developed in the follow-up initiatives that these first events brought about.

In the aftermath of the launching of both plans in favour of a European federation, various organisations for European unity were founded throughout Europe. The Union of European Federalists, an initiative of the participants in Hertenstein, realised in December 1946 and the European Parliamentary Union initiated by Richard Coudenhove-Kalergi (1947) are two well-known examples.[33] In various Western-European states sub-branches of these movements arose, such as the *Beweging voor Europese Federalisten* (BEF, Movement of European Federalists) and the *Europese Beweging* (EB, European Movement) in the Netherlands, both established in 1947.[34] In the spring of 1948 – following the Prague putsch of February 1948, a time in which the Cold War tensions started to show their real character across Europe – the various pro-European organisations joined forces in the organisation of what was ambitiously called the 'Congress of Europe'.[35] The aim of the Congress, which took place from 7-11 May of that year, was to broaden the support for the concept of a united Europe, based on freedom of expression and respect for human rights.[36] Although the organisation of the Congress was in the hands of European pressure groups for the federalisation of Europe, the purport of the event went far beyond that and so the Congress of Europe marked the start of the transition in fact between the early-post war years in which the notion of European integration was only present as a theoretical one, dreamed about in club meetings of a like-minded intellectual elite and the development of the concept as a political principle.

As the location for the Congress, The Hague was chosen. The symbolic appeal that this Dutch city had developed as the international city of peace and justice after the international peace conferences of 1899 and 1907 had been held there, might have contributed to this decision. With the ideal of European unification being deeply interwoven with the ambition to let peace and justice prevail over war, The Hague befitted the occasion. The Congress was presided by Winston Churchill and attended by various other political spearheads and dignitaries. The future German Federal Chancellor Konrad Adenauer, Harold Macmillan and François Mitterand, to mention only a few, took part. Even the Dutch crown princess Juliana and her husband Prince Bernhard were present. There were more than 750 participants, from 26 European countries, plus delegations from Canada and the United States. Substantial delegations from France, the United Kingdom, Belgium,

Italy, Switzerland, Austria, Denmark, Greece, Norway, Sweden and the Netherlands were present.[37] On behalf of the Dutch pressure groups, Hendrik Brugmans and Hans Nord (1919-1996), the front men of the EB and the BEF, took part. But the delegations not only consisted of intellectual idealists. Politicians, churchmen, captains of industry, and trade union representatives were present.[38] Dutch political names figuring on the list of participants were those of Jonkheer Marinus van der Goes van Naters – a 'red lawyer' from Nijmegen who in 1946 had become the leader of the Dutch Labour Party, the *Partij van de Arbeid* (PvdA) – and Emmanuel (Maan) Sassen, the legal specialist in the Dutch Lower House for the *Katholieke Volkspartij* (KVP), the Catholic People's Party.[39]

The plenary meetings of the Congress took place in the *Ridderzaal* of the Dutch parliamentary building.[40] The ceremonial setting of the Congress was to contribute to the message that something very special was happening there. Close to the luxurious tapestries with which the room was decorated, was a flag of Europe, 'boasting a red 'E' on a white background.'[41] At the conference, Churchill's proposal of bringing about a United States of Europe in the form of a federative union was confirmed. The practical result was the adoption of a series of resolutions, endorsed by the delegations of all states present. The participants expressed their commitment to the goal of a United Europe 'throughout whose area the free movement of persons, ideas and goods is restored' and the bringing about of a Charter of Human Rights, a Court of Justice, and a European Assembly to institutionalise this United Europe. Furthermore, they pledged to give 'in our homes and in public, in our political and religious life, in our professional and trade union circles, […] our fullest support to all persons and governments working for this lofty cause.'[42]

'This lofty cause' was, however, not defined in detail. Although it was explicitly stated that a European Federation should be brought about, that this federation should get the institutions it needed to function with real power and that, therefore, its Member States would have to 'transfer and merge some portion of their sovereign rights', practical short-term measures were not laid down.[43] The extent to which the individual states needed to 'transfer' their sovereignty, and the extent to which they would on the other hand remain sovereign was not discussed. Thus the pledge that the attending delegations gave at the end of the conference remained rather vague and was not linked to any direct political consequences; the ambitions were not recorded in treaty agreements. Viewed from a different angle, however, the proposed plan was in many ways revolutionary and a break with

how international affairs had hitherto been arranged on the European continent. If the European Federation were to become a reality, many affairs arranged until then by the individual states would be taken over by federal institutions, invested with supranational powers on the basis of which these institutions could decide on behalf of these states. Absolute sovereignty of the nation states and cooperation on an intergovernmentalist basis would become concepts of the past. In this respect, the pledge the Congress subscribed to, was far-reaching.

Together with the events taking place in international politics – i.e. the Cold War becoming manifest and the states of Western-Europe struggling to formulate an answer – the Congress of Europe functioned as a catalyst for political debates on European integration. The delegates of the various states who had been present in The Hague on these spring days of 1948, by means of supporting the political resolutions, had committed themselves to support the goal of a United Europe in their homes and in public, in their political and religious lives. When these participants returned to their daily lives and jobs, an active search for political and public support for integrating Europe started.

This chapter will show what this search turned out to be in the Netherlands and how it resulted in laying the foundations for the Dutch approach to the process of European integration in the years to come.

1.2 The Notion of European Integration Taking Root in the Netherlands

The Second World War had left the Netherlands traumatised. In the five years of German occupation (1940-145), 230.000 Dutchmen had met their end, 100.000 of whom were Jews. Many more people were scarred physically or mentally for the rest of their lives.[44] Moreover, the country had been ransacked, the production machinery had suffered great damage and the public debt had increased tremendously. Apart from the physical damage and losses, the war had put an end to deeply cherished convictions on the position of the Netherlands in the world and on how this position could be safeguarded. More than anything it had made clear that the principle of absolute neutrality, that the Netherlands had committed itself to in the nineteenth century, could not guarantee the safety and well-being of the country. Now that the war was over, this realisation had to be given a place in a process of rethinking the guiding principles of the international and defence politics of the Netherlands.

The urgency of this exercise was underlined when soon after the war the Netherlands got to suffer another blow that affected the long cherished neutrality and striving for good international relations of

the Netherlands. On 17 August 1945, the nationalists Soekarno and Hatta proclaimed the independence of the Republic of Indonesia on the territory that had since the nineteenth century been the possession of the Netherlands as the Dutch East Indies. After having experienced the humiliation of the breach of the country's neutrality, the thought of losing the colony in the East aroused heavy emotions in the Netherlands, both in the public and political domain. *'Indië verloren, rampspoed geboren'* – freely translated: the Indies lost, disaster found – was the creed used by the post-war governments of Louis Beel (1946-1948) and Willem Drees (1948-1958) in their attempts to crush the Indonesian calls for autonomy.[45] Losing the colonies, it was perceived in the Netherlands, would imply a degradation to 'the rank of Denmark'; it was judged to mean the end of the country's historically obtained international allure.[46]

In the midst of these turbulent times of post-war rebuilding, the discussion in Western-Europe on European unification arose. The concept did not immediately take root in broad layers of the Dutch political community, nor in society as a whole. The notion of a federative construction between the states of Western-Europe was viewed sceptically by those strongly attached to the traditional Atlantic orientation of the Netherlands. Both in terms of political and trade relations, the Netherlands had a history of looking for partners overseas; towards the United Kingdom and the US in particular.[47] With these states the Netherlands felt related, based on the thought that all three were countries that for their prosperity depended on good overseas trading relations. This conviction has been reflected in many descriptions of the place of the Netherlands in the world and the essence of the Dutch culture. Only one example is the remark of Johan Huizinga (1872-1945), the father of cultural history in the Netherlands, in one of his works on Dutch national culture: 'We belong on the Atlantic side. Our centre of gravity is at sea and across the sea. Our company is the western people […].'[48] The crucial role of these states in liberating the Netherlands of the German occupation, had only contributed to this feeling of Atlantic kinship. After the war, the Atlantic orientation remained present in the mindset of many who worked in the Dutch Ministry of Foreign Affairs, the international departments of the other Ministries and the great trading centres of the country – the captains of industry of the port of Rotterdam, for instance – and of those who led in politics. Confronted with the concept of European integration – a process aimed at integrating the continental part of Western-Europe, in which the United States would obviously have no part and the

involvement of the United Kingdom being unclear – the Atlanticists in the Netherlands assumed a sceptical attitude.[49]

Nevertheless, the ideal of a unified Europe struck a sympathetic cord with a small intellectual and political vanguard in the Netherlands. Those in the Netherlands associated with Dutch pressure groups in favour of a united Europe, such as the Dutch 'Europeans' Hendrik Brugmans and Hans Nord, became the forerunners in a still tender public intellectual debate on the future of Europe. They were supported in their attempts to stir the public opinion in favour of European integration by various political advocates who had declared themselves in favour of the notion of European unification. Especially, in PvdA circles (Jonkheer Van der Goes van Naters and Alfred Mozer) and within the KVP (Jos Serrarens and Maan Sassen for instance), such people were to be found. The social-democrats thought that Europe could function, socio-economically and culturally, as a bridge between the Soviet-Union and the United States of America. This theoretical viewpoint of the PvdA, known as the theory of the *Third Way,* propagated that Europe should develop into a politically and economically strong and independent entity.[50] The KVP was primarily guided by moral idealism and a fear of communism. After the war, this party sought protection for the country in trying to bring about a 'legal community of nations'. Since the effectiveness of the UN left much to be desired in this respect and the KVP even started to doubt whether this international organisation would ever be able to function that way, the party put its hopes on initiatives for a European federation.[51]

The range of publications that the *avant-garde* of pro-European unity thinkers produced between 1947 and the early 1950s is characterized by a content full of fierce and dramatic arguments in favour of European integration.[52] They had in mind a united Europe which was necessary to rescue the states of Western-Europe from disaster. Along these lines, references were made in this respect to the horrors of the war, but also to the Soviet threat. Europe was presented as being in a crisis, and European unification was the sole solution to overcome it. These federalist thinkers stressed that in order to prevent the decline of the European continent, it definitely had to break with the system of sovereign states. From a political point of view this idea would have far-reaching consequences. It implied the creation of a European government, sufficiently equipped with decision-making power without having to consult the Member States.[53] In order to create an economically prospering United States of Europe, it was necessary to introduce one European market, with one European currency. To protect the federation against external dangers a common foreign policy

should be formulated and a European army should be set up. The legal basis of this federation should not be limited to national constitutions. In time only a federal constitution, based on the American model, could serve as a basis.[54]

In these early post-war years, the pro-unity thinkers do not seem to have been bothered by the problem of the practical workability and feasibility of European integration. Remarkably, the fear of the potential loss of political sovereignty and independence of the Netherlands or worries about the loss of essential values of the Dutch culture or identity remained undiscussed. The same held true for legal difficulties and the harmonising of different systems of national law. These lacunae are reflected by another void in reasoning, namely a lack of consideration of if, how and on what basis a European legal, economic, political and 'national' culture should be brought about before a European federation could take root. It raises the impression that these thinkers started from the notion that a federation should come about first, before attention needed to be paid to its fleshing out. Another question not posed was which countries should or should not be members of the union. For the reason of preventing war, it was considered obvious that Germany could not be left out,[55] but questions regarding the countries that should be involved and whether there would be a geographical border to the European federation were ignored.

The grounds for these gaps in the reasoning of these opinion makers are difficult to determine. The explanation might be sought in the deep conviction that for the sake of the states of Western Europe the proposed federation had to be established. Lots of work needed to be done and the moment to think of difficulties and all kinds of nuances was to be postponed. This to prevent the European project from being imperilled before it had even started. Looking at it from an opposite position, in the early post war years the notion that the Netherlands would be able to survive as an independent state on its own, may also have seemed even more of an unrealistic idea; a perspective that may have contributed to a less critical attitude towards the concept of European federalisation.[56]

With their strong focus on the necessity of European unification for the states of Western-Europe to overcome their economic, moral and political misery, and their disregard of the downsides, the federalist thinkers – consciously or subconsciously – followed a long Dutch tradition of thinking about international politics. Ever since early modern-history, the Netherlands had been guided by a strong instrumental international orientation aimed at securing its economic

and political interests. The search for trade in the far East and West that lay at the basis of the Dutch Golden Age was based on this orientation, even when the search for strategic partnerships and the conversion to, and international propagation of the principle of neutrality after a series of wars in the eighteenth century had financially exhausted the country.[57] Although both periods markedly differed with regard to the policy principle that was focused on (free trade versus neutrality), they are alike as far as the basic starting point is concerned: the country depended on its relations with the wider world for its economic and political well-being.[58] Whereas in the seventeenth century the Netherlands actively engaged in international contacts from a position of economic and political strength, the late eighteenth and nineteenth century brought the turn towards striving after good international relations from a position of weakness: it was realised that the Netherlands was too small to manage affairs on its own.

From the second half of the nineteenth century onwards free trade was inextricably bound to neutrality in the foreign policy mindset of the Netherlands and was also internationally propagated.[59] The more countries would declare themselves neutral, so it was argued, the smaller the chance that war would break out and the better the international commercial interests of the Netherlands would be protected.[60] The neutrality of the Netherlands was internationally respected and was, around the turn of the century, even underlined by the organisation of two international peace conferences (1899 and 1907) in The Hague. As a result, the Netherlands became the host of various international courts and organisations for the development of international law.[61] The Peace Palace in The Hague, that opened its doors in 1913, was the impressive reflection of the internationally recognised role of the Netherlands as the staunch supporter of neutral arbitration in international conflicts. The inscription on the façade of this building – *pacis tutela apud judicem* –[62] referred to the wisdom of that seventeenth century Dutch legal thinker Hugo de Groot, the universal-thinking man of peace, who had sensed the (future) preferences of his country in the field of international politics wonderfully well.[63]

After 1945, when it had become clear that neutrality could not keep the country safe, a process of re-evaluating the Dutch foreign policy principles commenced. However, the essential consideration on which the neutrality principle had been founded, had been left untouched, or had – in fact – only gained strength during the war: the Netherlands needed international partners in order to keep itself on its feet. When the Dutch federalist thinkers came up with their arguments in favour

of European unification founded on the necessity of this process, they tuned in on this age-old foreign policy conviction of the Netherlands.[64] In terms of rhetorical theory, they tried to connect to an age-old *topos;* something that would prove to be very effective in the political domain.

1.3 Political Positioning: the Van der Goes van Naters/Serrarens Motion (1948)

When on 7 May 1948 the Congress of Europe opened, the Netherlands had already concluded a first important political debate on the position of the country with regard to the plans for European unification. Post war elections had brought the KVP and the PvdA – former political adversaries – to political cooperation in what was to become a series of Catholic-Social coalitions.[65] The second of these coalitions, was led by the Catholic statesman Louis Beel (KVP). Installed in July 1946 and dissolved in August 1948 the first Beel cabinet was mainly preoccupied with the question of the decolonisation process of the Dutch East Indies.[66] However, with the discussions on European unification becoming louder in the European and national domain, the threat of new international conflict growing and the first cooperation initiatives in Western-Europe developing in the form of the draft Treaty of Brussels which was to bring about the Western European Union (WEU), the question whether to unify or not to unify Europe became politically relevant for the Netherlands. As a kind of Europan NATO *avant la lettre,* the WEU was aimed at bringing about a military cooperation between Great-Britain, France, Belgium Luxembourg and the Netherlands. By signing the treaty, the signatories committed themselves to support each other in case any of the contracting parties should fall victim to a military attack. Besides, it was laid down that the contracting parties would harmonise their economic policies in order to stimulate the economic recovery of Europe and that cultural exchange between the states would be promoted.[67]

On 17 March 1948, the Netherlands, under the Beel cabinet, signed the Treaty of Brussels. By doing this, the Netherlands said goodbye to its pre-war period of staying neutral in international conflicts. Together with the bill that presented the treaty for approval, parliament received an explanatory memorandum in which both the ratio behind the initiative of the WEU and the decision of the government to sign the treaty was explained.[68] The text is pervaded with the desire to bring about an international legal order that would guarantee a peaceful coexistence of peoples and that would thus contribute to the wellbeing of these peoples.[69] Interesting is the rationale, linked to this desire,

in which the Netherlands is depicted as the country par excellence to benefit from the bringing about of the WEU:

> 'For a country as the Netherlands, whose territory is such an exposed part of the European continent, it is […] of utmost importance to promote by the development of the international organisation, that the possibility of war should be as small as possible and that an international organisation, aimed at preventing wars, is developed as effectively as possible.'[70]

The fragment illustrates that the government's approval of the Treaty of Brussels was based on the conviction that the Netherlands, given its geo-political position, depended on international agreements for its well-being. The necessity of approving this treaty, in other words, was linked to the fate of the country of the Netherlands.

After the presentation of the treaty, in accordance with Dutch parliamentary traditions, written reactions of parliament and plenary debates in both Houses of the Dutch parliament followed. Firstly, the Lower House was to respond. Here many turned out to agree with the reasoning of the government. The motivation expressed by the various political parties to vote in favour of this treaty shows that there was a general consensus among the Dutch political parties that in the post-war era a break with the old politics of neutrality was needed and that this treaty was a step in the right direction.[71] Fear of new dangers and attendant consequences for the Netherlands, was the important motive in the parliamentary considerations. This, for instance, is shown by the contribution of the Member of Parliament (MP) for the liberal *Volkspartij voor Vrijheid en Democratie* (VVD) Gijsbertus Vonk, who presented the treaty as a desirable and necessary first step towards the development of a 'socially and economically joint power that could set bounds to the communist aim'.[72] In his enthusiasm for the treaty, Vonk referred to the credo of the Dutch Union of Utrecht of 1579: 'United we stand'.[73]

Notwithstanding the general positive parliamentary reception of the treaty on the basis of deep belief in the necessity of international partnerships, questions came also up in parliament now that the long tradition of neutrality was left behind. Although, the intergovernmental arrangements proposed in the Treaty of Brussels did not come close to the concept of European unification or federalisation as it circulated in intellectual debates, the development of this military cooperation was in parliament clearly associated with debates on this matter as boasted by Churchill and the Congress in The Hague.

Regarded by many as a first step towards the 'development of an international legal order',[74] the question was posed how this process would develop further. Would more treaties of this kind follow? Should a united Europe ultimately come into being? And if so, what would this Europe look like? Would typical values and interests of the Dutch nation still have a place in this order? With respect to this last point it was in particular the Christian parties that wondered whether the Christian character of Europe and of the Dutch nation would be safeguarded within an increasingly united Europe. In particular, the lack of a reference to the guiding role of Christianity for the signatory parties in the preamble of the treaty was regretted.[75]

What bothered these MPs in fact, were crucial questions on the extent to which this treaty would introduce a fundamental break with the traditional forms of international cooperation that the Netherlands had been familiar with for ages. Could the WEU be seen to be heralding the bringing about of a European federation? And what would such a federation exactly imply for the identity of the Dutch political community? The fact that these questions were posed, indicates that the conceptual discussions on European unification had stirred feelings with these parliamentarians that a phase of transition might break in the field of foreign policy arrangements, the consequences of which were hard to imagine. They show that the step from theoretical concept to actual realisation of European unification was not easily conceivable for certain political currents in the Netherlands. The establishment of the WEU could be a first step towards the still mysterious concept of European unification, although it could just as well be seen as yet another form of intergovernmental cooperation that the Netherlands had ages of experiences with.

In this twilight zone of old and new conceptions of safeguarding the international interests of the country, a group of political advocates of European federalisation saw a window of opportunity that could be used to give fate a hand. Inspired by the 'All-Parties motion' that had been tabled in the British House of Commons to get – in the build up to the Congress of Europe – wide parliamentary support for the idea of association of the states of Western Europe,[76] political pioneers in favour of European integration introduced a draft-motion in the parliamentary debate on approval of the WEU that would give Dutch foreign policy a new direction. The most explicit advocates and name givers of this motion were the social-democrat Marinus van der Goes van Naters (PvdA) and the Catholic Jos Serrarens (KVP), both of whom had taken to federal enthusiasm soon after the war.[77]

When submitting the motion, Van der Goes van Naters started by pointing out that the idea of European unity had become increasingly common in the years 1947-1948. He explained that the PvdA and KVP supported 'that thought, which has actually become concrete in all parties and groups and religious organisations […].'[78] He added that the time had come to put on record some essential principles stemming from this thought. The draft-motion, which was first presented on 18 March 1948, stated that 'a lasting union of States in differing functional alliances – [in Dutch: *doelverbanden*] – has become necessary, which may grow into supranational entities.'[79] With the motion the initiators wanted to express their support for letting the Netherlands participate 'in a real legal community of democratic states in a federal structure, in which power should be assigned to one or more supranational organs.'[80] The competences of this federal association should lie specifically in the fields of monetary and economic policies and defence. The motion concluded that the Lower House invited the government to assist in the quick construction of such a legal community and its organs. This 'considering the mission of leadership' that awaited the Netherlands 'in this constructive, supranational work.'[81]

By introducing the motion, the initiators cleverly managed to adjust the parliamentary agenda to their own political preferences. No longer was the approval of the Treaty of Brussels the only nor the most important issue at stake in parliament on 18 March 1948. By means of the motion, Marinus van der Goes van Naters, Jos Serrarens and those who supported them, induced parliament to express its thoughts on whether the Dutch political community should or should not support political initiatives leading up to 'a lasting union of States' in Western-Europe and even take the lead in it.

The motion was ambiguous in its wording, leaving a margin of interpretation for the various political currents in parliament. Unclear concepts such as a 'union of states', based on 'functional associations' that could develop into 'supranational unities' were proposed, without presenting a clear indication of what this union and these associations and unities would entail in everyday political practice. In his explanation in the plenary debate Van der Goes van Naters went beyond these terms and stated that a 'true legal community on a federal basis' was the ultimate goal for which competences should be conferred on 'supranational organs'. The latter rendering differs from the first in that the aspect of 'functional associations' made room for the term 'supranational organs'. Both concepts are markedly different in that the first calls to mind a picture of sovereign countries deciding to cooperate on the basis of mutual interests. The bringing about of supranational

organs, on the other hand, presupposed the possibility of conferral of national sovereignty on a supranational level of governance. The functional concept sounded more or less in keeping with the old way of international treaty making, whereas the supranational notion could be explained broader.

The discrepancy between the two descriptions of the objective reflects, on the one hand, the ambiguity in and premature character of the plans for European unity at the time that this debate took place. The initiators of the motion did not have any certainty with regard to where these plans would eventually lead to and were thus forced by the circumstances to formulate their ideal broadly. On the other hand, however, these federal idealist can also be suspected of clever strategic thinking. By formulating the motion as a statement of intent, leaving the end goal and the terms within which the end goal was to be reached unclear, the risk of fierce political resistance was restricted. By staying close to concepts of international cooperation that the Dutch political community as a whole believed in and was acquainted with, the chances of getting the motion approved were maximised.

The vagueness in the wording of the motion, however, should not conceal its political relevance. With the tabling of the Van der Goes van Naters/Serrarens motion, the PvdA and the KVP opened the political debate in the Dutch parliament on European integration in order to sound the political commitment for this process. If this motion was adopted, it could be explained as a reflection of the political will in the Netherlands for embarking on the experimental road towards 'functional associations' and/or 'supranational entities.' The motion – if and when adopted – captured the consensus of the Dutch parliament on a cooperative and open attitude towards future initiatives with the objective to bring about a 'legal community of democratic states in a federal structure' in Western-Europe.

Interestingly, despite the fundamental political question it entailed, the motion did not lead to any fundamental debate in the Dutch Lower House. Support for the motion turned out to be widespread. In the debate on it, its multi-interpretability proved politically effective. Those in parliament supporting the bringing about of a full-dress European federation – first and foremost the initiators of the motion and their political friends – enthusiastically received the call for supporting the realisation of a federal structure. Less federal minded parties remarked, however, that the proposed federal associations should only cover those fields of international politics that were considered to *need* federal organisation, areas such as economy and defence in which the Netherlands was perceived to

depend on international support. Other policy areas in which the Netherlands was able to manage affairs on its own should remain based on national sovereignty. In the words of the liberal MP Gijsbertus Vonk, the Netherlands should be on its guard against the bringing about of 'utopian paper constructions' that 'could harm the national independence' of the Dutch state.[82] The anti-revolutionary protestant MP Sieuwert Bruins Slot (ARP) remarked similarly that a focus on the functional aspect in the realisation of a European federation should prevent Europe from developing in some sort of 'monistic super state'.[83]

These and similar comments reveal that for a substantial group of diverse parliamentarians the 'functional' aspect referred to in the motion was decisive in their consideration to support it. Functional federal associations that would serve the economic and security interests of the Netherlands were welcomed. But bringing about a full-dress European federation was a different matter. They drew the line at the bringing about of what conceptually occurred to them as a 'super state,' in which the Netherlands no longer had sovereignty of its own. The motion Van der Goes van Naters/Serrarens was interpreted by these MPs as leaving ample room for this distinction. Approving the motion was explained here as politically supporting the bringing about of functional federal European associations and at the same time leaving room for rejecting a real European federation. The equivocal wording of the motion facilitated this distinction and prevented this issue from becoming a principle political bone of contention between advocates and antagonists of the concept of European federalisation. Interestingly, the Dutch parliament as a whole seemed to have been rather satisfied with the vague wording of the motion. The initiators were not asked to be more specific on their political objective. This may be seen as a clear indication of the level of generality that was still accepted by the various Dutch political parties in the early instances of debating European unification in the political domain.

In the government, the motion was received with similar reservations. The Minister of Internal Affairs, Pim van Boetzelaer van Oosterhout (KVP) pointed out that the widely worded instruction for government to assist in the realisation of European unity with a federal character and based on functional associations, should be limited by the insertion of the clause 'as far as possible and desirable.'[84] This amendment shows that also on the level of the cabinet it was deemed important to keep the political options of the Netherlands open. The amendment indicates that the government, like various parliamentary parties, welcomed the idea of bringing about functional federal associations on a European level that would benefit the interests of

the Netherlands. In line with the moderate currents in parliament, it refused to commit itself to the bringing about of a European federation right away.

Without any further discussion, the amendment of Van Boetzelaer was accepted by the presenters of the motion.[85] Subsequently, the liberal rightwing party in parliament – the VVD – as well as the protestant CHU, the anti-revolutionary protestant ARP, the Catholic KVP and the socialist PvdA, expressed their support for the draft. Then, when on 28 April 1948 the Van der Goes van Naters/Serrarens motion was put to the vote, an overwhelming majority of 80 to 6 voted in favour the motion. This vote, in essence, resulted from the basic and age-old consensus in broad political circles that international partnerships were essential for safeguarding the vital economic and security interests of the Netherlands. The idea that the Netherlands should take part in functional supranational alliances – and should even assume a leading role in it – perfectly befitted Dutch political culture in which pro-active internationalism was linked to the continued existence of the independent state of the Netherlands. Since the motion did not demand a fundamental political choice between 'functional associations' that would serve the sovereign interests of the Netherland and a general 'federal association' in which the Netherlands could no longer hold on to its sovereignty, it raised no fundamental criticism. The general obscurity in the early post war years of what the theoretical concept of European unification would exactly imply, and the lack of alternatives seen, might have contributed to the broad political support it received. Since the process of rebuilding post-war Europe had just started and the future of the Netherlands and the continent looked uncertain, any scenario contributing to the objective of reconstruction was attractive.

On the same day as the Van der Goes van Naters/Serrarens motion was adopted in the Lower House, the Treaty of Brussels on the bringing about of the WEU came up for vote. It was approved with an even greater majority of 82 to 6 in favour. On this issue as well, the conviction that the Netherlands needed international partnerships – a conviction that seemed to exist rather independent of political colour – was decisive. The few votes against in both the vote on the motion and the treaty, came from members of the *Communistische Partij van Nederland* (CPN), the Dutch Communist Party, which had been founded in 1935. In their view, all initiatives to reach unification or even cooperation in Western-Europe should be rejected since they were interpreted as a form of capitalist conspiracy; i.e. as an evil reaction of capitalist states against the actions of the Soviet Communists, with

whom the Dutch CPN associated itself. Approving the establishment of the WEU, and/or any initiative contributing to the objective of unifying Europe, were judged as giving up the country's sovereignty to 'a small group of people, dollar imperialists and their henchmen.'[86] In doing this, the CPN was the only group in parliament that did not associate European unification with more freedom for the Netherlands, but with less. The gap between the mindset of the political majority in which the concept of European association was linked to the Netherlands being able to safeguard its sovereign interests and the CPN-mindset in which such an association was seen as an undesired extradition of Dutch sovereignty to international capitalist powers, was too wide for the CPN to convince its political opponents.

Following the decision of the Lower House, on 24 June the Dutch Upper House approved the Treaty of Brussels with 25 to 4 votes, thereby paving the way for the realisation of the WEU. Again, the Communists voted against. Although this occurrence was politically significant in itself, the real political revolution had taken place in relative silence with the adoption of the Van der Goes van Naters/Serrarens motion on 28 April 1948. This seemingly innocent deal – on the face of it, it was of secondary importance compared to the approval of an international treaty – would have far-reaching consequences. In the years following its approval, the motion would prove to function, both politically and rhetorically, as the foundation of what would become the Dutch policy on Europe. The political commitment of the Dutch parliament and government to vague principles of European integration in a time that such integration was not yet practiced would soon be explained by advocates of further integration as an undivided promise to support the coming into being of supranational European institutions such as the European Coal and Steel Community, the European Defence Community and the European Economic Community to which the Netherlands was considered to 'transfer' parts of its sovereignty. The policy line, launched with the adoption of the Van der Goes van Naters/Serrarens motion would even form a political basis for approving a revolutionary amendment of the Dutch constitution in 1953.

1.4 The First Feat: Approving the ECSC (1952)

Although the resolutions signed by the Congress of Europe had been a promising political symbol, the process of realising European unification did not have a flying start. Admittedly, in London on 5 May 1949, the statute that provided for the foundation of the Council of

Europe was signed. It was intended to 'bring closer unity between all like-minded countries of Europe.'[87] The eleven states that supported the initiative were Belgium, Denmark, France, the Irish Republic, Italy, Luxembourg, the Netherlands, Norway, Sweden, Great Britain and Northern Ireland. They were driven by the shared conviction that 'the pursuit of peace based upon justice and international cooperation is vital for the preservation of human society and civilization.'[88] The main organs of the Council were a Committee of Ministers and a Consultative Assembly. As its residence, Strasbourg was chosen.

After its establishment, the international deliberations within the framework of the Council of Europe resulted in a series of international conventions, such as the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the European Cultural Convention (1954) and the European Social Charter (1961). But despite these results, it was realised in the participating states soon after its establishment that the Council would not have much effect in terms of truly integrating the countries of Western Europe, since no national sovereignty was conferred on the international level and, for that reason, the implementation of the agreements could not be enforced. The Council turned out to be no more than another international organisation, based on intergovernmental agreements, just like the recently established United Nations (1945) and NATO (April 1949). Notwithstanding the positive effect that these organisations had on creating international partnerships, they could not live up to any of the supranational or federal ambitions and expectations raised in the previous years as a testimony of lofty principles of deep solidarity between the states of Western-Europe. Other organisations, such as the Organisation for European Economic Cooperation (OEEC, 1948), which tried to set off a process of economic integration, encountered insurmountable political dissension between France, Germany and the United Kingdom. So, the search for new initiatives kept going.

In the spring of 1950, two years after the ratification of the Treaty of Brussels and only a month before the Cold War conflict in Korea broke out, the tide seemed to turn. On 9 May 1950 the French Minister of Foreign Affairs Robert Schuman, inspired by an idea of the French economist Jean Monnet, presented a concept plan for integrating the coal- and steel industries of the various Western-European countries under a so called 'High Authority' on which the participating countries would confer their sovereignty in these sectors.[89] The main objective of the plan was 'the elimination of the age-old opposition between France and Germany.'[90] The sectoral integration in coal and steel production,

Schuman predicted, would be a first step from which further integration could result.

The Netherlands and the Schuman Plan

Even before the plan was officially published, Konrad Adenauer – the first *Bundeskanzler* of the Federal Republic of Germany – assented to the plan. With this German approval, a crucial condition for its viability was met. Also in the Netherlands the plan was welcomed with enthusiasm. In one of the first reactions to the press, the Minister of Economic Affairs Jan van den Brink (PvdA), stated that the Schuman Plan was a 'welcome surprise'.[91] Entering into sectoral integration of the coal and steel industries in order to reach further economic integration was considered to be a 'very realistic path to go'.[92]

The initial enthusiasm in the Netherlands for the Schuman Plan was damped, however, by the position of the United Kingdom. Regarding their country still as a world power, the British did not deem it a sensible idea to get involved too strongly in the unification initiatives of Western-Europe. Since the country refused to accept the principle of transference of sovereignty to the supranational governing organ of the ECSC, the High Authority – a strict demand of the French – it was clear from the start that the UK would withdraw from the negotiations and, by doing that, for the time being also from the process of European unification.[93] Considering the traditional orientation of the Netherlands towards the United Kingdom for its foreign policy, this development complicated matters. Stepping into a community on which sovereignty would be conferred, together with the former arch-enemies France and Germany – both being big political powers – raised hesitation within the first Catholic-Socialist cabinet, which, led by Willem Drees, had succeeded the Beel cabinet in August 1948.[94] The government welcomed the idea of sectoral integration, provided that it was a solution for the German question and of benefit for the economic position Netherlands. It, however, preferred to see these interests safeguarded within the context of the OEEC in which the United Kingdom took part.[95] In a European coal and steel community in which the UK would not take part, the Netherlands feared a High Authority in which France and Germany would run the show and the Dutch economic preferences would be thwarted.[96]

The ambiguous stance of the Dutch government was reflected in the Dutch negotiation strategy. Whereas the Netherlands actively engaged in the negotiations in order to make an international agreement possible, the national demands were never abandoned. This assertive attitude of the Dutch delegation towards the negotiations on the

Treaty resulted in the compliance of the other countries with some crucial Dutch demands.[97] In the Treaty, the supranational element was smaller than the drafters of the Schuman Declaration had envisioned. The Dutch succeeded in restricting the domain of the High Authority, while extending it in favour of the intergovernmental governing organ of the coal and steel community – the Council of Ministers.[98] It illustrates the instrumental focus on national interests that motivated the Dutch government – rather than supranational idealism – in the process of reaching agreement on the ECSC framework. Eventually, the government of the Netherlands agreed to become partner to the treaty. On 18 April 1951 then, the treaty establishing a European Coal and Steel Community (ECSC) was signed in Paris, by – what would be called later – the six Founding Fathers of the new Europe. The Netherlands was one of them.[99]

Position of the government

In the presentation of the treaty to the Dutch parliament, it stands out that the second Catholic-Socialist cabinet (1951-1952) led by prime minister Willem Drees (PvdA), which had succeeded the Drees I government in March 1951, elaborated extensively on the historical background of the treaty.[100] It enlarged on the lamentable situation in Western-Europe in the early post-war years and the challenge that its countries were confronted with of finding a way to durably safeguard peace and security. It pointed at the rise of the concept of European integration as a way to meet this challenge and the initiative of the ECSC should be seen as a first important result that might bring realisation of this concept closer. The treaty was at the very least read as an essential step in bringing the arch-enemies of Germany and France closer.[101]

The rationale of the Netherlands becoming a party to the treaty was placed in this historical context. Strikingly similar to the presentation of the WEU, the government again pointed out the special position of the Netherlands as a reason to go along with the treaty. 'Especially for our country, the government claimed, 'political and economic integration of Europe offers, irrespective of disadvantages which can be identified, a very attractive perspective […] the purport of which far exceeds the disadvantages meant.'[102] Although the Dutch government was not fully convinced of the future well-functioning of the High Authority and feared that despite the preventive measures, protectionism might still creep into the 'common' market that the Six would establish for coal and steel, it was willing to take a chance. The economic and security gains that might follow from the treaty for the Netherlands were considered greater than any possible downsides.[103]

In other words, the risk that might follow from not taking part in the initiative – the possibility of isolation on the continent – was considered greater than the hazards resulting from joining.

By choosing this line of argument, the government positioned itself on solid grounds. Presenting the establishment of the ECSC as a functional and necessary step on the way to peace and security in Western-Europe concurred with the Van der Goes van Naters/ Serrarens motion, which had been adopted by a great parliamentary majority two years before. Since then, not much had changed in the political composition of parliament and government. The second Drees cabinet was a continuation of the first, with support of the same parliamentary parties. As long as the functional line as set out by its forerunner was followed, parliamentary support for the Drees II cabinet with regard to the approval of the ECSC was likely. Since public opinion – as far as such had already developed on the theme of European unification – was also still dominated by the protagonists of the ideal of European (federal) unity, the government could face parliament with confidence.[104]

Debate in parliament

In the parliamentary debate on the approval of the ECSC Treaty that took place in the autumn of 1951, first of all the effort of the Dutch delegation to the negotiations was eulogized. In the written preparation of the parliamentary debate it was remarked that: 'By the way in which this delegation has acquitted itself of its task, it has been proved again how a small country can contribute significantly to the building of the international community. The number of sceptics in our nation, who sometimes have their doubts about the Dutch task and potential in this field, have been put in the wrong.'[105] The majority in the Lower House was relieved to see that, after the great humiliation of the Second World War in which the Netherlands had become the plaything of the occupier, the Netherlands could still join in with some of the great powers of Europe. It explicitly applauded the pro-active participation of the Dutch government in the process and encouraged a leading and stimulating role of the Netherlands. 'From various quarters it was […] remarked,' thus the parliamentary report on the treaty reads, 'that it would be a very bad example for the European cooperation indeed, if the Netherlands were to sit on the fence.'[106]

The comment reveals that the 'taking the lead' line of reasoning, already introduced with the Van der Goes Naters/Serarrens motion, was continued after 1948. The success of bringing the European states together was linked to a pro-active stance of the Netherlands. Important

to note as well is, that in this fragment the parliamentary groups supporting it did not distinguish between international community building or European cooperation – the terms used in the quote – and newer concepts of European *unification* or *integration*. The fact that the ECSC was described as 'European cooperation' might indicate that in (certain sections of) the Dutch Lower House the initiative was not (yet) perceived as essentially different from earlier forms of international or European cooperation based on international treaty law.[107] This observation befits the majority focus on joining in and seeking partnerships with the countries surrounding the Netherlands. Both seem to start from the old foreign policy mindset of the Netherlands in which seeking and finding international cooperation was deemed essential.

In the plenary debate in parliament, various political parties – the KVP, PvdA and CHU most clearly – immediately expressed their support for the treaty. These parties were convinced that the ECSC Treaty was a first step on the way towards a unified Europe and that such a unified Europe was absolutely necessary for reasons of self-preservation. Marga Klompé, a KVP representative in the Lower House, who in 1956 would become the first female minister of the Netherlands, stated that 'Europe must become one entity if it wants to keep some sort of "independence" and also be able to assure its citizens of a decent existence. […].'[108] Jan Schmal, MP for the CHU, reasoned: 'Unity or downfall, that is the choice we are confronted with.'[109] Whereas the comment of Klompé concerned the European-level, that of Schmal touched the national dimension: 'What is at stake today is […] a matter of a purely existential nature: the future of our country and our people, of us and our children, nothing less than that is involved.'[110] Although it was recognised that it was not at all clear yet where the ECSC would lead to and if and how exactly it would benefit the Netherlands – the plan was marked as a 'leap into the dark' – the alternative of the not coming about of (forms of) sectoral economic integration was seen as even more frightening.[111] These MPs, although not sure of the consequences, were willing to take the risk of joining the ECSC, because they were strongly convinced that not joining in such partnership would leave both the continent and their country beyond redemption. Again we are dealing here with an argument of necessity based on economic and security considerations; the argumentative form that had also decided the debate in 1948 in favour of the adoption of the motion Van der Goes van Naters/Serrarens. Again, it linked up with that age-old consensus: the Netherland would not be able to safeguard its wealth and safety on its own. On this point, a broad spectrum of political parties could

agree and, therefore, there was not much debate on the desirability of approval of the ECSC treaty.

Remarkably, something resembling an argument in favour of the European integration process *per se* only came up when the consequence of approving the ECSC were discussed. Was the coal and steel community essentially to be seen as a first step leading to European federal unity or should it just be considered as another product of instrumental internationalism, not to be directly linked to a larger supranational ideal? Except for the KVP, which argued emphatically in favour of the development of a full-dress European federation,[112] some of the other parties in parliament were clearly driven by instrumental internationalist motives when approving the ECSC initiative. The CHU and ARP openly pleaded for preservation of the national identity and sovereignty. The ARP-politician Sieuwert Bruins Slot, for instance, stated: 'Only that which [the national] independence can no longer bear […] should be considered for federalisation.'[113] Bruins Slot clearly did not support the idea of supranationalisation and/or European federalisation in general, but was willing to give his vote to European federal initiatives as far as the Netherlands needed them for its own post-war development.

It is noteworthy that Bruins Slot, by making his remark, did not define the concept of the federalisation of Western-Europe as an all-or-nothing issue, but as something that could be started and stopped along the way, in an instrumental manner, in line with the interests of the Netherlands. This definition – at least in theory – clashed with an understanding of the concept of European federalisation – held by the convinced federalists of the KVP – as something that might start with the ECSC, but needed to develop towards a full-dress European federation, in which national sovereignty would be left behind. It is relevant to establish here that the discrepancy between these diverging understandings of what European federalisation was and should be and how the initiative of the ECSC was to be seen in this context, was never fundamentally debated nor problematised in the parliamentary debate on the approval of this treaty. Instead, the political parties in the Netherlands agreed to use the designation 'sui generis' for the political mix-form that was about to emerge from sovereign national states that federally arranged their coal and steel industries.[114] By doing this, these parties – with very diverse political views – served the development of a political consensus on the desirability of approval of the ECSC. However, something fundamental was also overlooked. By inventing a new term that blurred the incompatibilities between the conflicting views held in the Dutch parliament on European unification, the

political parties of the Netherlands agreed to develop new forms of international partnerships without having reached agreement on what those partnerships should lead to, let alone what the consequences for the Netherlands would be. Thus, a seed of discord was sown, which would be there to grow until someone would reap its fruit.

In contrast with the ARP which, despite its fundamental objections against the process of European federalisation decided to approve certain federally arranged initiatives that benefitted the Netherlands, the Communists of the CPN drew a more radical line. This party rejected the ECSC because it was against any step that amounted to a European federation. Being the only political party taking such a radical stance, it had a hard time finding political support. In the parliamentary debate on the approval of the ECSC, the CPN tried its luck by claiming incompatibility between the Dutch constitution and the treaty under discussion. It was the first, but certainly not the last time that the national constitutional order was brought up in parliament as a possible brake on the process of European integration.

The constitutional argument of the CPN representatives focused on the competence of the Dutch national judge to decide on the validity of decisions of the administrative organs of the ECSC – i.e. the High Authority and the Council of Ministers. Articles 33-44 of the ECSC Treaty were interpreted by the CPN denying the national judge this competence. That is why they interpreted the treaty to systematically putting aside the national judge; an arrangement that was not compatible with article 162 and 163 of the Dutch constitution.[115] Respectively, these articles stated that 'the judiciary is only held by judges, appointed by law […]' and 'nobody can be denied the judge assigned to him, against his will.' Basically, this was a complaint against the conferral of legal sovereignty by the state of the Netherlands on a supranational organ. The question raised by the CPN could be justified at least to the extent that, by the installation of a supranational organ the decision making power of which went beyond the national judge, was a new situation that might well raise constitutional questions.

From defence towards consensus

Already soon, however, it became clear that the CPN stood alone on this point. In the written preparations to the plenary debate, a majority of parliament had expressed to second the statement that 'the present treaty can in no way be considered contrary to our constitution.'[116] In the plenary debate, it reconfirmed this stance. Supported by the parties that had no intention to let their European dream be impeded by the Dutch constitution, the Minister of Economic Affairs, Jan van

den Brink (KVP), came off well with the argument that according to the government the articles of the Dutch constitution, referred to by the Communists, were not intended to prohibit 'the installation, for very long-lasting periods of time, of a regular, but specialised judge for a special task, certainly not when this installation can be judged to have been in complete peace […] [this has been] no subject of passionate debate.'[117] So by reasoning that the Dutch constitution did not explicitly forbid the new situation and no one else had raised the matter, any fundamental debate on constitutional obstructions for the establishment of the ECSC were averted in 1951. It illustrates that a majority of the Dutch political community valued the coming about of the coal and steel community to such an extent that it was willing to push the question of constitutionality to the background.

On 31 October 1951, the treaty was adopted in the Lower House with 62 votes against 6. All votes against came from CPN members. Approval in the Upper House followed on 19 February 1952 with 36 votes in favour and 2 (CPN) votes against. In the summer of 1952, a start was made with the setting up of the ECSC and its administrative institutions.

1.5 The Floodgate Flung Wide Open: Constitutional Reform (1953)

Meanwhile, the European reality had already moved forward again. Now that establishment of the ECSC was a fact, voices arose that argued in favour of starting more initiatives for sectoral integration for the Six to overcome various other post-war challenges and gain power. In the early 1950s, establishing a European Political and Defence community, were proposed. These institutions should enable the member-states to gain political power and to take a hard line when necessary.

While the Netherlands was confronted with the various plans for European integration and took part in international negotiations on their realisation, fundamental questions on the organisation of the state arose. The concept of the conferment of sovereignty on supranational executive organs was new. Especially in the areas of political and military decision making – traditionally symbolising sovereign power and independence of the nation-state – the implementation of this principle required a new approach to the traditional concept of state-sovereignty. The realisation of the new initiatives for European unification then asked for a fundamental debate on how supranationalisation was to be brought into agreement with the political and legal principles that had been at the basis of the functioning

of the Dutch state for centuries. The perfect occasion for such a debate arose when in the early 1950s the Dutch government opened a reform procedure of the constitution of the Netherlands.

This process of constitutional reform had more to do with a long drawn-out national political conflict on the influence of parliament in international treaty making than with the start of the process of European unification. After the Napoleonic rule had ended and a monarch was installed as head of the Dutch state, the constitutional power in international treaty making was left to the sovereign king. This arrangement had its origin in a troubled past. The era of the Dutch Republic was considered to have shown that the system of treaty making in which the contracting power was allocated to the States-General, led to immense indolence in international politics.[118] Therefore, when in 1814 the Netherlands was to make a fresh constitutional start, it was decided to reduce the role of parliament in such matters.[119] The new constitutional arrangement concerning treaty making only bound the King by the obligation to *inform* Parliament of the treaties he *had* signed.

In the century that followed, the States-General objected against this arrangement because it deprived both Houses of the possibility to exert influence in running international political developments. When in parliamentary practice the King's foreign policy privilege was transferred to the government, parliament attempted, by way of several constitutional amendments, to gain power in this field.[120] However, without much success. When after the Second World War international cooperation expanded and the number of treaties signed per year increased threefold, the Dutch parliament insisted – again – by means of a process of constitutional reform on greater involvement in treaty making procedures.[121] The government, led by Willem Drees (PvdA), agreed, but without losing sight of its own interest. With ideas for European integration taking shape, the coming into existence of ever more and far reaching international agreements was to be expected. This prospect only increased the interest of the Dutch government in keeping its hands free in processes of international treaty making.

Two Constitutional Committees and their recommendations

In order to prepare the constitutional reform, two committees were set up to advise the Dutch government. First of all, on 17 April 1950, a Constitutional Committee, led by the Roman Catholic politician and lawyer Josef van Schaik was set up by Royal Decree. Its task was broadly defined as to examine the possibilities for a general revision of the constitution, of which the arrangements on foreign affairs was only

an element.[122] In addition, on the insistence of the Dutch parliament that wanted to safeguard its interest, a special Committee was set up to investigate the relation between the government and parliament concerning foreign affairs.[123] It began its work on 25 April 1950 and was chaired by Grotius admirer, emeritus Professor of Constitutional Law and former judge of the Permanent Court of International Justice Willem van Eysinga. Interpreting their respective assignments, both Committees were asked to balance democracy – i.e. the parliamentary right to control – against the governmental freedom to act in foreign affairs as it saw fit.

Both Committees consisted of professors, policy advisors, statesmen and members of parliament who had displayed a special interest in matters of international politics or were schooled in legal matters. With regard to gearing the activities of both Committees to one another, it was agreed that the Van Eysinga Committee would advise the Van Schaik Committee on reform of the constitutional provisions concerning foreign relations.[124] This implied that the latter Committee – at least in terms of chronology – had the final say and/or could serve as double-check on the Van Eysinga Committee. Obviously, in any case, the setting up of two Committees, producing two separate reports, came with an important advantage for the Dutch government: the recommendations that appealed to the government most could be selected for proposal in parliament.

After more than one year of study, the final report of the Van Eysinga Committee was presented on 9 July 1951. In the first part of the report, Van Eysinga *cum suis* expounded on how the Committee had perceived its task. A balance between two important principles had to be found. 'To preserve the essence of parliamentary democracy' was identified as one,[125] the other was the foreign affairs interests of the Netherlands. According to the Committee, the practice of developing foreign policy through joint efforts of the Minister of Foreign Affairs and his diplomats, hidden from parliamentary interference, should be adjusted. This so-called 'secret diplomacy', associated with the political customs of the pre-1914 era, could not be upheld in the post-1945 world, with its growing international contacts, touching increasingly on fields of economic and defence policy, which had until then been considered as domestic affairs.[126] Particularly when this process was not subjected to democratic control in the nation state, so the Committee realised, it would easily lead to an unnoticed erosion of national sovereignty.[127] Since this would negatively affect the democratic legitimacy of the development, democratic control on the treaty-making process was regarded essential.

The Van Eysinga Committee, however, was also of the opinion that foreign affairs was still considered to need and deserve a special status within the Dutch national democratic order.[128] Especially with growing international contacts, it expected that ever more frequently at international conferences the Dutch government would find itself in the position to decide *hic et nunc* on international matters touching on the national interest. Governmental representatives would not have the time to consider such decisions long and calmly in the governmental haven.[129] This view concurred with the Dutch constitutional tradition as it had developed since 1814, in which the government held the prerogative of being able to act on the international stage with vigour and without parliamentary consultations.

The draft amendments proposed by Van Eysinga *cum suis* reflected the balancing between the two principles. Parliamentary consultation after the signing of a treaty was extended. The Committee proposed to insert a new Article 60 in the Dutch constitution that stated that all treaties should be approved by parliament before they would enter into force. With this provision the democratic legitimacy of international treaties would be better safeguarded, compared to the situation under the constitution in force. In that document it was laid down that only *solemn* [in Dutch: *plechtige*] treaties would be presented to parliament for approval. Since most international agreements that were signed by the Dutch government did not meet the formal requirement of a solemn treaty, following the old arrangements, they did not need to be approved by parliament.[130] This confusing and from a democratic perspective somewhat arbitrary practice, would belong to the past as far as the Van Eysinga Committee was concerned.

To warrant the independent position of the Minister and his *Corps Diplomatique*, on the other hand, several reservations and exceptions to the general rule of parliamentary approval were advised. First of all, the Committee explained that, just like in earlier versions of the constitution, the responsibility of drafting international treaties should remain with the government. Although it was advised to inform parliament on important international agreements *before* government would decide on the final text, the Minister of Foreign Affairs remained the designated person to assess on a case by case basis to what extent 'the national interest allow[ed] dealing with the questions publicly.'[131] This implied that, in the proposal of the Van Eysinga Committee, no constitutional power concerning the draft of international agreements was granted to the Dutch parliament. Similar to the existing constitutional arrangements, government preserved the prerogative to assess what was or was not in the interest of the country.

Subsequently, as listed in the Van Eysinga draft of Article 60, subsection four, several situations were described in which no parliamentary approval, both in the pre- and post-signing phase, was needed. These exceptions covered 'extraordinary cases of a pressing character' that, among other things, needed the continuation of existing treaties or concluding short-term treaties without the consequence of important monetary obligations.[132] Again an important role was reserved for the government in identifying such cases with a pressing character. Moreover, the procedure of tacit consent was introduced. The van Eysinga Committee came up with the formulation that approval of parliament was considered to be granted 'if not within thirty days after submitting the treaty, one of the Chambers of the States-General has expressed the desire that the treaty be submitted to a decision of the States-General.'[133] Implementing this procedure as laid down in draft Article 60, subsection three, would save time in the treaty-making process. This was a favourable condition for the freedom of action of government in international politics.

The exceptions listed create the impression that although democratisation, and more specifically, participation of parliament in the treaty-making process, had been the incentive behind the constitutional reform, this goal faded somewhat into the background during the process of constitutional reform. A considerable share of the changes was aimed at constitutionally warranting the independent role of the government and its diplomats. In addition, the Committee made recommendations to adjust the Dutch constitution to the post-war development of increasing international cooperation. It suggested to amplify the old article 58 with the principle that the King – i.e. the government – fostered the development of the international legal order.[134] The Committee explained the suggestion as a reflection of the thought that the safeguarding of peace needed legal agreements between states; a formulation that is clearly reminding of the century-old Grotius tradition of the Netherlands. Article 60(a) then, provided for the possibility to delegate, under a treaty, competences to international organisations. Moreover, and this was crucial, this article stated that in case of contradiction with regulations applying in the Dutch Kingdom, the binding decisions of such organisation would be given priority. In these suggestions, Van Eysinga's academic beliefs were clearly present. They also perfectly matched the topical question of the time of how conferment of national sovereignty on supranational organisations should be constitutionally reflected.

When on 11 July 1951 – two days after the Van Eysinga Committee had done this – the Van Schaik Committee presented its interim report,

it became clear that the line of reform as suggested by Van Eysinga c.s. was, in many respects, generally supported.[135] Similar to the document produced by the Van Eysinga Committee, facilitating international treaty-making was more extensively considered than balancing powers between government and parliament in the most democratic manner.[136] Some editorial changes were suggested.[137] More meaningful are the changes recommended by the Van Schaik Committee that concerned the content of provisions in the Van Eysinga-draft. Particularly interesting are the considerations of Van Schaik c.s. on the suggestion of Van Eysinga to introduce a provision arranging that agreements by which 'supranational organs' would be called into existence, should be approved in parliament by two-thirds of the recorded votes. This suggestion was dropped by Van Schaik for the reason that its introduction would impose too great a constitutional restriction in the field of international relations.[138] A similar comment was made in relation to the initial Van Eysinga draft of Article 58. Although the Committee Van Schaik supported the idea of a provision that stated that the King should foster the development of the international legal order, the original extension *'as far as possible'* was rejected.[139] According to the Van Schaik Committee this extension could convey the impression that the Netherlands was not wholeheartedly prepared to develop such a legal order but would instead hold aloof. And becoming the object of such misunderstandings was considered completely undesirable.[140]

This comment on preventing misunderstandings concerning the priorities and loyalties of the Netherlands reveals what was considered to be important in the approach of the Van Schaik Committee. The reputation of the Netherlands as the protagonist of the international legal order was seen as something to be upheld as a matter of principle. Indicating possible limits to this international preference in the text of the Dutch constitution was – by definition – judged undesirable. Interestingly, the Van Schaik Committee did not consider any desirable effects of recording a limitative clause in Article 58. It seems not to have reckoned with a situation in which the international legal community had been developed to such an extent that a constitutional limit to this development would be useful. A situation in which the Netherlands would no longer be willing or be able to contribute to the development of the international legal community was not discussed. Whether this void in reasoning was consciously created – in order to let sleeping dogs lie with regard to the early steps towards European unification of which the nature and consequences were still unknown – or whether it was just not seen as a relevant matter for discussion is difficult to establish. But it is clear that constitutionally emphasising the internationalist

foreign policy preferences of the Netherlands was given priority over any negative side effect that such an explicit international accent might have in the long run. In this respect, the Van Schaik Committee went further than the Van Eysinga Committee.

In order to bring the goal of an international legal order within reach, the Van Schaik Committee proposed to record an article that stated explicitly that national powers could be handed over to supranational organs. The reason for adding this article must be sought in political considerations. Although it was emphasised in the interim report that technically speaking the recording of such an article was not needed since the 'old' Dutch constitution did not oppose such a transfer of authority, recording this provision was considered desirable. It had become clear, the Committee stated, without indicating when and how, that 'entrusting supranational organs with powers is not without reservations generally considered as reconcilable with the Constitution.'[141] When in the future more and further-reaching competences would be granted to such supranational organs, the Van Schaik Committee argued in anticipation, questions on the constitutionality of that development could be expected.[142] To prevent difficulties of this kind, recording an article of the purport described above was advised. Moreover, there was reasoning starting from constitutional symbolism. The proposed article would 'give the necessary relief to a legal form of which may be assumed that – given the increase in working towards international bonds and integration – it will be frequently adopted in times to come.'[143] The proposal strongly resembled draft Article 60(a) of the Van Eysinga Committee. The only significant difference was that, whereas Van Eysinga had used the term 'international organisation', Van Schaik spoke of 'supranational organisation'; an indication that Van Schaik c.s. more explicitly anticipated future developments in the field of European unification.

In the considerations of the Van Schaik Committee a new international legal order and the goal of contributing to it were presented as a matter of course. The principle of conferring power on a supranational level of decision making was presented as a logical step resulting from the notion that an international legal order was developing, of which the Netherlands would be a part. Support for this process by making the constitution ready for this was presented as no more than rational. The ostensible logic applied by Van Schaik c.s. can, however, be questioned. To what extent – in terms of political reality – had an international legal order *de facto* taken shape in July 1951? Despite the recent establishment of the UN, NATO, the Council of Europe and deliberations in the national parliaments on a European

Coal and Steel Community, it was still not at all clear what such an international order would look like. A pending question was to what extent Member States would have to give up national power and – following from this question – to what extent adjustment of the national legal arrangements was desirable. To put it differently, in the summer of 1951 it was still uncertain whether an international legal order – that is to say a legal order in which nation states would no longer set their own rules but were subordinated to inter- and or supranational institutions, invested with competences that these states had conferred on them – would become a factual reality. The advice of the Van Schaik Committee does not reflect this political uncertainty. The development of the international legal order was presented as a clear thing, achievable by clear means.

Arranging future matters in international politics through supranational organisations was also presented as a matter of course. The lack of discussion on this point in both Committees is remarkable, just as the fact that without any further discussion in both the Van Eysinga and the Van Schaik report, the bottom-up term 'functional associations' as it had appeared in the Van der Goes van Naters/ Serrarens motion in the spring of 1948, had disappeared in favour of the top down concept of 'supranational organs'. Apparently, the functional aspect of handing over competences, was not deemed a necessary condition by these Committees. Perhaps, the conceptual difference between the two was not even noticed. Interestingly, the supranational concept was not further explained in the report. Similarities and differences between conferring competences and sovereignty on supranational organisations and 'ordinary' international cooperation through treaty law, in which the signatory party remained essentially sovereign – a thing that the Netherlands had practiced for ages – were, surprisingly, not discussed. Nor was it clarified why such a shift in practicing international politics was needed, to what level national competences should or should not be delegated to the supranational level and why this had to be constitutionally anticipated upon. The Van Schaik Committee seemed to perceive it as an inevitability that 'in the future further-reaching competences will be assigned to supranational organs.'[144] This firm wording, which left no room for dwelling on uncertainties as to the extent of supranationalisation, almost gave the constitutional reform as proposed by Van Schaik c.s. the character of a declaration of intent, making clear that the Netherlands was preparing for a supranational future, regardless of what this would look like exactly. The constitution was deployed to reach this political goal.

The position of the government

Of the two committee proposals, the version drafted by Van Schaik and his committee members benefitted the independence of the government in international affairs most clearly and, moreover, facilitated the coming into existence of a new international legal order. Generally speaking, it can be observed that the Drees cabinet favoured the design and wording of this report. On 1 December 1951, the government presented its draft reform of the constitutional chapter on foreign affairs to parliament. In the explanatory memorandum of the Bill of approval, it observed:

> 'Neither the Government nor the States-General [the Dutch Lower and Upper House] would want to create a situation by which – in order to achieve more Parliamentary involvement – in the future the Netherlands would find itself in the international world more at a disadvantage in negotiations with fellow parties, because of time consuming and lengthy delays in decision making on the Dutch side […] On the basis of this consideration it will be of importance for the Government and the States-General to envelop with firm safeguards the principle of involvement of the States-General in the coming about of *all* [emphasis original] agreements, no matter in what form or by what name, so that quick and efficient Dutch action on the international stage is guaranteed.'[145]

The fragment reveals the priorities of the Dutch government in this process of constitutional reform. Parliamentary participation was seen as valuable, but not at all costs. When it came to the crunch, freedom to act in foreign affairs – i.e. being able to act quickly and efficiently when a situation in international politics asked for it – needed to prevail over acting according to the common procedures of parliamentary control that were more time-consuming.

Seen from a rhetorical point of view, the government created a rhetorical dissociation.[146] Theoretically, in a parliamentary democracy upholding the separation of powers, parliamentary control was essential for the democratic functioning of the polity. The request of the government to parliament to give up this fundamental democratic right – at least to a certain extent – in case international treaty making was at stake, clashed with this view. Thus a conflict seemed to develop between paying lip service to the principle of democratic control, while denying its importance when international politics was concerned. The government cleverly resolved the threat of such a conflict by

dissociating processes in national and in international politics as essentially different. Procedures of international negotiation and democratic control, so it was stated, did not go together. This notion was sustained by the pragmatic argument that the interests of the Netherlands would be best served if the Dutch parliament were to yield its rights. Interestingly, the interests of the Netherlands and how these would be served exactly by yielding parliamentary control were not explicated. Still, the government daringly presented itself as their natural guardian. It was implied that parliament and parliamentary control were obstructive to serving the country in the field of international politics.

The constitutional amendments proposed by the government reflected the idea that parliament was subordinated to the government in treaty making. First of all, the prerogative of the government to sign international treaties without consultation of parliament was not meddled with. In addition, it was explicitly laid down in Article 58 of the Dutch constitution that the King – in political practice the government – should foster the development of the international legal order:

> (58): 'The King is the supreme director of foreign relations. He promotes the development of the international legal order.'[147]

The proposal to record this article was a telling sign that the government desired to embrace the striving for international partnerships as a defining constitutional trait for the Netherlands.

At first sight, the proposed Article 60 that stated that *all* treaties should be approved by Parliament before they would enter into force, seemed a significant gesture towards the Dutch parliament:

> (60): 'Agreements with other Powers and with international organisations are concluded by or with authorization of the King and, as far as required by the agreement, ratified by the King. The agreements are submitted to the States-General as soon as possible; they are not ratified and do not enter into force until after having been approved by the States-General. […]'[148]

With the recording of this general principle an essential strengthening of the position of parliament in that process was guaranteed compared to the previous arrangements.[149] However, one look at the subsections of article 60 changes that perspective. Subsections (a) and (b) of article 60 respectively defined that under certain conditions the approval

of parliament could be given silently and that under certain other conditions approval was not at all needed:

> (60a): 'Approval is supposed to have been granted, if not within thirty days after submitting the agreement the wish has been expressed by or on behalf of one of the Houses of the States-General, that the agreement will be submitted to the judgment of the States-General, or if both Houses of the States-General before expiration of this term declare that no judgment is required.'[150]
>
> (60b): 'The approval is not required:
> a. if an agreement is concerned, for which this has been laid down by law;
> b. if the agreement exclusively concerns the implementation or extension of an agreement which has been approved, as far as the States-General on approval have made no reservations on this;
> c. if the agreement does not impose important financial obligations on the Kingdom and has been concluded for one year at the most;
> d. if in exceptional cases of a pressing nature the interest of the Kingdom requires, that the agreement enters into force without delay.
>
> An agreement, as meant under d. is still subjected for approval of the States-General, if within thirty days after submission of the agreement by or on behalf of one of the Houses of the States-General the wish to that end is expressed. If the States-General withhold their approval of the agreement, it will be discontinued as soon as possible.'[151]

Thus, the government made up for the essential freedoms it had seemed to yield.

The freedom of the government was further safeguarded – and in a more groundbreaking manner – when in addition to the earlier proposals, on 23 January 1952, the introduction of a new subsection (c) was proposed. The idea for the article was directly related to developments in the field of European integration. Plans for the development of a European Defence Community asked for far-reaching transference of power in an area previously considered the stronghold of national sovereignty. Hitherto, the Dutch constitutional provisions concerning defence had concentrated on the military protection of the national domain and on national conscription. With the government

the question arose how the creation of a European army would relate to the Dutch Constitution.[152] When it referred this question to the Royal Committee Van Schaik, the latter advised the introduction of an additional article to prevent future difficulties.[153] This article provided that:

> 'In the interest of the development of the international legal order there can be a departure from provisions of the Constitution. In such a case approval of the agreement does not ensue but by a verdict of the States-General with two-thirds of the votes cast in each of the Chambers.'[154]

Article 60, subsection (c) catches the eye for several reasons. It stands out in the first place because of the procedure it set out in case an international agreement deviated from the Dutch constitution. Then, the international agreement had to be endorsed by a two-thirds majority in both the Lower and the Upper House. Whereas this might seem a special and heavy procedure, it was a light formula in comparison to the process of constitutional reform as prescribed by the Dutch constitution. Constitutional reform in the Netherlands had until then involved two readings, with elections in between and approval by two-thirds of the recorded votes in both Houses in the second reading.[155] The newly proposed article 60, subsection (c) enabled the government to accept international treaties that violated the Dutch constitution without completing a procedure of constitutional reform. In doing this, the provision benefitted the development of an international legal order more than it advantaged the ability of parliament – let alone the Dutch people! – to control the government in far-reaching international decisions.

In its letter to parliament in which the government accounted for the introduction of the article, practical considerations stand out again. The government stated that it '[is] aware of the fact that growing international cooperation may make it necessary in certain cases of international agreements to deviate […] from constitutional regulations. Delaying the bringing about of the agreements in question until an amendment to the Constitution has come about, is impermissible from a practical point of view.' Here a fundamental notion was explicated. It was argued that traditional procedures of constitutional reform would take too much time and that, therefore, a simplified procedure to deviate from the constitution should be adopted. In stating this, the government testified of its conviction that, for practical reasons, procedures to warrant the democratic functioning

of the state of the Netherlands as recorded in constitutional procedures could and should (!) be brushed aside when international treaty-making was at stake.[156] The Netherlands was considered to gain to such an extent from international agreements, that sacrifices in the field of democratic procedures were admissible. What was not considered in the letter of the government was the fact that, by withdrawing controlling power when an international agreement touched upon the national constitution, the introduction of article 60(c), might imply the risk for the Dutch parliament and people of losing sight of what exactly happened in the field of European integration.

Internationally the introduction of the article was observed with both wonderment and admiration. In reaction to article 60(c) being brought up for approval in the Dutch parliament, the New York Times published an article with the telling title 'Leading the Way'.[157] Here, the introduction of article 60c was depicted as 'a historic precedent the importance of which can hardly be overestimated.' Compared in an international context, the proposal of the Dutch government was unique. Although other countries in Western-Europe were also involved in setting up the ECSC and EDC, the Netherlands was the first to constitutionally anticipate its position in a growing supranational order. And, compared to other countries that adjusted their national legal orders to the process of European integration, the Netherlands went much further. No other country opened the doors as wide as the Netherlands in 1953 in the sense that treaty law received precedence of the national constitutional order.[158] The typical political and constitutional culture of the Netherlands might be explanative here. Ever since early modern times, international partnerships, facilitated by international treaty making, had been a priority in the foreign policy of the Netherlands. Since 1814, the Dutch political community had gone along with the wish of the Dutch government to act relatively independently of parliament in foreign affairs. Special constitutional procedures had protected this independence. A strong orientation on developing international partnerships, combined with a constitutional culture in which facilitating the government in treaty making had become the starting point, can contribute to an understanding of how the Dutch government had come to the unique set up of article 60(c).[159]

Other proposals of the government worth mentioning were Article 60, subsections (d),(e) and (f). The first two respectively regulated the acceding to and termination of international treaties, and their announcement and binding force:

(60d): 'For accession to and cancellation of agreements the provisions of the three preceding articles apply.'[160]

(60e) 'Agreements are only binding on citizens as far as they have been published. The law lays down regulations concerning the publication.'[161]

Article 60, subsection (f), provided that competences could be assigned to international institutions:

'Organisations under international law can by, or by virtue of an agreement be assigned powers of legislation, administration and jurisdiction. […]'[162]

Similar to Article 58, this article was instrumental in the development of an international legal order rather than enhancing the involvement of the Dutch parliament in foreign affairs.

Position of the government

In presenting its proposals to parliament, the main aim of the government was to convince the Lower and the Upper House of the content of the complete draft reform on the constitutional chapter on foreign affairs. A main constraint to the debate was that on one crucial point the interest of the government on the one hand and of parliament on the other essentially differed. Parliament had asked for a constitutional reform in order to enhance its power in the field of international affairs. As observed above, however, the articles as proposed by the government were, in fact, largely aimed at retaining independence of the Dutch government in these matters. A conflict of interests seemed at hand.

The obvious link between the draft reform and the process of European integration, however, enhanced the chances of the government for shepherding the draft undamaged through parliament. The parliamentary party of the KVP, for instance, fiercely favoured the idea of European integration and therefore might be willing to push the demand of parliamentary control into the background. For the same reason, finding support of the PvdA seemed within reach, in particular because Marinus van der Goes van Naters, a leading PvdA-representative and advocate of a federalist Europe, had taken part in the deliberations of the Van Schaik Committee. Fierce opposition against the proposed reform, on the other hand, could be expected from the ultra-left. The CPN opposed the idea of European unity as a matter

of principle. Support of this party for a constitutional amendment, obviously aimed at facilitating this process, was unlikely.

Between the positions of KVP and PvdA on the one hand, and the CPN on the other, there was a broad gamut of more moderate parties that could be expected to take a more ambiguous stand in the debate. This range of liberal and Christian-democratic parties might well have serious concerns with regard to the role of parliament in procedures of international treaty-making, while at the same time sincerely appreciating the draft for how it could contribute to bringing about European partnerships. Their vote in favour of the reform was decisive for the government in order to get the two-thirds majority in the two readings necessary for this constitutional amendment to take effect.

Debate in parliament

Immediately after the start of the debate in the Lower House on 13 March 1952, parliamentary concerns on the element of parliamentary control turned out to be widespread. The social-democratic MP Jaap Burger (PvdA), who, trained as a lawyer, had been a member of the more moderate Van Eysinga Committee, was the first to express his concerns. He displayed a sharp eye for what the exceptions to the general rule of approval (article 60, subsection (b)) implied in terms of the slackening of parliamentary control. In the new situation Dutch society 'especially for extraordinary and urgent cases, especially for the most serious cases' could be bound by international agreements 'without Parliament, not to mention the Dutch nation, knowing anything about it. Secret diplomacy in optima forma can resurge again in this way.'[163] In the PvdA view, this draft provision essentially signified a step backwards in parliamentary influence in international treaty making.

Another example of criticism, concentrating on the issue of democratic control, came from the Communist senator, Cor Geugjes (CPN), who took issue with the fact that parliament was still not involved in the drafting phase of international treaties. The States-General, he claimed, were bound hand and foot once the text of international agreements had been agreed upon. This was all the more true since the Lower House had no right of amendment as far as international agreements were concerned. Upholding the procedure of parliamentary approval after signing, would leave parliament in a paradoxical situation: 'The Constitutional Committee has already pointed out that not all agreements can be discontinued immediately. […] the States-General will be confronted with a *fait accompli* and will have to put up with an agreement which they will disapprove of in the end.'[164]

Other MPs accepted the structure of what has also been called 'repressive' parliamentary control – another term for the ex post approval of treaties – but opposed the introduction of silent approval in article 60(a). The liberal expert on constitutional law, Pieter Oud (VVD), expected 'severe difficulties' and agreed with the comment of the anti-revolutionary Sieuwert Bruins Slot (ARP), that the article needed an extension that described the way by which both the Lower and the Upper House could express their wish to submit an international agreement to the explicit judgement of the States-General.[165] Apart from these procedural concerns, however, both Oud and Bruins Slot still approved of the introduction of the principle of silent approval. Oud explained his stance from the consideration that 'in practice we may need this [principle of silent approval],'[166] This comment is interesting, since it shows that Oud regarded the constitutional reform as an act of anticipation, whilst being in expectation of a new situation in which new manners of decision making 'may' be needed. In other words, Oud was willing to accept the introduction of new decision making procedures in the field of treaty making because he expected this field to change in the near future. Remarkably, the perceived purport of this change was not at all elaborated on by Oud. Although his remark probably refers to plans for European integration, Oud was not explicit on this point.

This leads to an important observation. So far, the criticism of the various MPs was aimed at the persisting lack of involvement of parliament in the drafting and approval phase of the treaty making process. This in itself, however, was no news. Already since 1814, the Dutch parliament had been dissatisfied with its democratic power in this field. The new element that made this fundamental discussion on the democratic powers of parliament in the early 1950s more interesting than ever before, was that the Netherlands was on the verge of entering into far-reaching European treaties, by which parts of the national sovereignty would be conferred on the European level. The stake in the game of foreign policy was even higher, now that the government was about to embark on a process with an unknown destination – maybe even a European federation. Remarkably, however, this crucial element was not immediately brought up by the MPs in the parliamentary debate. Whereas they focused emphatically on the aspect of democracy, the new element of European integration did not figure prominently in the parliamentary contributions to the debate.

This, however, changed when the value of the Dutch constitution came under debate in an extensive and fundamental sub-debate on the introduction of Article 60, subsection (c). As explained above, if and

when this article would be approved, henceforth a single two-thirds majority could decide on the approval of an international treaty, that – once it would enter into force – could operate *de facto* as an amendment of the national constitution.

The CPN held the strongest principles and practical objections against this article. Joop van Santen, one of the CPN senators, referred to the Van Schaik Committee as the *'Coup d'état* Committee'.[167] His political associate and colleague, Cor Geugjes, was mainly concerned with determining whether or not a certain international agreement deviated from the constitution. It was not merely a theoretical exploration, he argued, to imagine a situation in which the government would be of the opinion that a certain international agreement did not deviate from the Dutch constitution and would consequently present parliament with a draft bill of approval that did not need the approval of a two-thirds majority but of a regular one only. It was, however, quite possible that the agreement in question actually deviated profoundly from the constitution. When and if parliament would realise this in time, it had the power to propose an amendment to the bill of approval.[168] However, this amendment could again be rejected by an ordinary majority. In such a case it could happen that even 'if in the Lower House the greatest minority possible were to be of the opinion that the agreement in question was contrary to the Constitution' such an agreement could be approved with the 'smallest majority possible'.[169] Although the scenario presented by Geugjes at first sight might occur a bit far-fetched, his analysis of how the reform could eventually work, meticulously showed how parliament, in the new situation, when in fact crucial matters were at stake, could be led up the garden path.

And even worse things could happen, Geugjes argued. Together with the introduction of the principle of silent approval as laid down in Article 60(a) and the exceptions as laid down in Article 60b, application of Article 60(c) could lead to more undemocratic practices. When the government would be of the opinion that an agreement did not deviate from the constitution it was allowed to decide, in accordance with Articles 60(a) and 60(b) subsection (d), not to present the agreement to parliament and let it take effect without approval. In such a situation the Netherlands would end up with an international agreement, that contradicted the Dutch constitution. And without the knowledge of the States-General, it would enter into force. How to deal with an international agreement, Geugjes wondered, for which Article 60(b), subsection (d), had been applied, when the States-General had abstained from approval and in relation to which the States-General in hindsight declared that it deviated from the constitution? According

to the draft reform such an agreement should be ended. However, not prior to the moment such a thing could be done in accordance with the provisions of the agreement concerned. This would leave the Netherlands in the awkward position that it was bound by an agreement that: 1) deviated from the constitution; 2) according to which, theoretically, all sorts of powers could be conferred on non-national organs; 3) would have been rejected by parliament; and 4); nevertheless, would not be ended by the government and would remain in force.[170] Such a scenario flouted all democratic principles that the Dutch state said it upheld in the sense that the will of parliament would be bypassed.

Also MPs from more moderate political currents saw similar dangers in article 60(c). The leading Catholic Carl Romme feared a situation in which opinion was divided on whether an agreement did or did not deviate from the constitution. This difference of opinion could occur between government and parliament but also between the Upper and the Lower House. In both situations the approval procedure would be heavily impeded.[171] Sieuwert Bruins Slot (ARP) raised the question on how and by whom deviation should be determined.[172] He wondered whether in the preparation phase of the treaty the primacy of signalling deviation lay with the government or with parliament. This was left unclear in the draft reform. This was a situation deemed undesirable by Bruins Slot.

What becomes clear from these comments is that the constitutional amendment led to contention in the Dutch parliament. Article 60(c) led to the core of the conflicting interests – independence versus control – between the government and parliament. On a deeper level, the discontent with this article seems to have been based on the existence of diverging conceptions of the value of the national constitution. The parliamentary critics of Article 60(c) preferred to see the national constitution as the immovable foundation of the Dutch democracy, which should not be lightly dealt with. If the possibility of deviation from the constitution was going to be recorded in the Dutch constitution, this concept of an inviolable constitution that protected the nation-state against unstable and undemocratic influences, was in danger. As a consequence it would lose its status of the absolute legal foundation of the nation-state and would degenerate, so it was feared, into 'Johnny's scribbling-pad' in which one could write or delete whatever and as much at will.[173]

This realisation also brought the dimension of European integration to the fore. In essence, the introduction of article 60, subsection (c) in the new Dutch constitution signified that the

Netherlands opened its constitutional gates for 'foreign' law. The traditional protective and identifying function that a national constitution and the stringent procedures concerning its amendment could fulfil *vis-à-vis* foreign powers – both on an internal and an external level – was deliberately eroded by the introduction of this article.[174] In parliament, opposition arose against this innovative principle. The senator Reint de Vos van Steenwijk of the liberal party VVD emphasised that, whereas he agreed as a matter of course that the Netherlands should strive for 'a certain manner of cooperation between the peoples of Europe', he also believed that in this development certain limits should be respected.[175] These limits were exceeded with this plan for constitutional reform:

> 'There are principles, laid down in the Constitution, from which there should be no deviation. If the government should be of the opinion that it is inevitable to do this, this should be considered carefully and be done as laid down in the constitution itself in case of an amendment.'[176]

Charles Welter, the leader of the *Katholiek Nationale Partij* (KNP, the Catholic National Party) – a splinter group of the Catholic Peoples Party KVP – feared violation of the constitution as well and spoke of 'harakiri of an independent country'. He particularly found fault with the prematurity of the regulation: '[…] our constitutional rights and freedoms of the people are restricted or put aside for the sake of international organs, [whereas] it has not even been considered in what way these organs themselves will at the time be subjected to control.'[177] The CPN was the most explicit in its objections. In the Lower House the Communist MP and former carpenter Henk Gortzak stated 'that the constitution should be a thing by which the rights of the people are guaranteed, something that cannot be given up just like that.'[178] According to his colleague Geugjes in the Upper House, article 60, subsection (c) would be 'the Trojan horse of the constitution' from which 'at any desired moment an article of the constitution can be razed.'[179]

Interesting observations can be made on how the concepts of international cooperation, European unification and a national constitution were perceived by these debaters. De Vos van Steenwijk (VVD) started his criticism by affirming his commitment to the greater goal as presented by government as the main reason for the introduction of article 60, subsection (c): stimulating the bringing about of an international legal order. To him, this was a valuable goal in

itself that was not contested. At the same time however, he thought that a firm national constitution was needed in order to define and protect important national values. Welter (KNP) and Geugjes (CPN), two political critics of European integration, were the only ones to explicitly associate the national constitution with the 'freedoms' and 'rights' of a people. To them, opening up this document for changes following from international treaties implied renouncing these freedoms and rights. These men perceived the national constitution to function as a wall against undesired international influence in case international decisions and Dutch interests would collide.

Although the notion of European integration was not explicitly involved in the analyses of these men, it becomes clear from their remarks that European unification, to the extent that the Netherlands would no longer be free to decide on its own rights and freedoms, was not welcomed. These contributions of representatives of the VVD, ARP, KNP and CPN therefore show, that in the early years of the 1950s, the interpretation of the notion of European integration – how would a unified Europe take shape in practice? And should any limits be observed? – was still contested among these parties. The metaphors used by these politicians in their speeches to convince their colleagues of the self-destroying power of the proposed articles are telling. Expressions as 'harakiri of an independent country' and 'the Trojan horse of the constitution' articulate the deep distrust that was felt against the introduction of Article 60, subsection (c). Implicitly, the national domain, protected by the national constitution, was depicted as a safe haven whereas the world outside of it was rhetorically represented as hostile and intrusive.

It stands out that the arguments of these critics and the approach suggested – i.e. withdrawing behind the constitutional dikes – could be at odds with the old preference of a political majority of taking a pro-active, cooperative and progressive stance in international politics. As had become clear already in the debates on the WEU and the ESCS, after the traumatic breaking of Dutch neutrality in the Second World War and the enormous damage that the war had caused, a parliamentary majority deemed it more important than ever to seek for a new alliance with international partners. In its rebuttal of the strictures of these faultfinders, the Dutch government could and would make use of these sentiments.

From defence towards consensus

The government reacted to the criticisms in the debate, by using different lines of reasoning to invalidate the arguments of the critical

MPs. Confronted with the comments of the parliamentarians Burger, Geugjes, Oud, Bruins Slot and others, that too little power was allotted to parliament, the government put forward in defence the general rule of approval as laid down in article 60. With the introduction of this provision, which according to the government had been overlooked by the MPs, the participation of parliament in the field of treaty-making had *ipso jure* increased. Again referring implicitly to the special character of the practice of international politics, it was added that it was unavoidable that 'to this rule certain exceptions were permitted.'[180] In short, this was a reconfirmation of the value cherished by the government that vigour and efficiency in foreign affairs should prevail over democratic control in constitutional matters.

More clarifying, and also more effective was the other line of defence based on metaphors, working at a meta-level and aimed at convincing the parliamentary opposition of the dawn of a new era that asked for an adjusted constitution and a ditto understanding of the constitutional concept. Already in the written preparation to the parliamentary debate, the government rejected the comments of the critical MPs, basing itself on considerations of national sovereignty being irrelevant and out of date now that a new era was breaking. In the post-war situation, it was argued, the paper-guard of the nation state should no longer function as an armour; it should be opened for change. Protecting national independence through a constitution that functioned as an 'impenetrable armour of sovereignty' [in Dutch: *een ondoordringbaar pantser van souvereiniteit*] was no longer an option for a small country that was continuously considered to need the international community in order to survive.[181] The *topos* of the small country that needed partners for protection – an image that the Dutch political community had been familiar with for long – was launched again in an ultimate attempt to convince the critical opposition. The crucial question of why this constitutional openness should be implemented at the cost of democratic control was smartly left out of consideration.

Throughout the process of approval of the constitutional reform – both in its first and second reading – this became a leading line of defence in the contributions to the debate of the government. The speech of the Minister of Interior Affairs Louis Beel in the Lower House on 14 March 1952 may serve as a typical example. 'The present-day generation has the moral duty [sic!] to labour for a new international legal order […]', he commenced.[182] This statement is interesting from a rhetorical point of view is, firstly, because Beel appealed to a moral obligation of parliament. Not only was it desirable that the Netherlands

would devote itself to the task of developing the international legal order, it had also an ethical obligation to do so. This pathos-rich remark seems to have been aimed at connecting to the old, historically developed political consensus existing in parliament, that the Netherlands could and should make a difference when the international legal order was at stake. It was presented as the natural and only right thing to do. To all this, Beel added an important new factor, namely that in the post-war situation – i.e. the new era – this constant in Dutch foreign policy would demand sacrifices: 'This new international legal order is growing, but its birth involves many sacrifices. […] We shall have to renounce many things we have been familiar with all our lives.'[183] Subsequently, he completed his argument by the remark that: 'our Constitution will undoubtedly lose value.'[184] Thus, step by step, by associating traditional internationalism of the Netherlands with a post-war obligation of further developing the international legal order and, consequently, with the dwindling importance of the national constitution, the constitutional reform as proposed by the government was presented as the right thing to do.

The missing element in Beel's argument was how the process of European integration as it had started to develop in the early years of the 1950s, exactly related to the tradition of internationalism that the Netherlands had been familiar with in the centuries before. Beel presented this new process as being in line with, or even resulting from the international orientation that the Netherlands identified with. This, however, was in contradiction with the fundamental changes that the constitutional reform introduced. Indeed, contributing to the international order had been a priority before. However, never before had the government been given permission to deviate from the Dutch constitution in concluding international treaties, without passing through a traditional process of constitutional reform typified by democratic safeguards. Beel passed over this crucial point in his considerations.

But a parliamentary majority did not seem to mind. Beel's ideas met with explicit approval from important sections in parliament. Beel's party, the KVP, supported the idea that the Netherlands should overcome its degradation to the periphery of international politics by assuming a leading role in the post-war process of building a new legal order. Referring to the motion, introduced and adopted by the Lower House in 1948, which had been explicitly aimed at the promotion of the realisation of the new international legal order, the Catholic MP Jos Serrarens expressed his joy at the draft constitutional reform in the first reading phase as follows:

> 'It is a good thing that we are one of the first countries to settle this matter explicitly. We have to uphold a still young tradition. […] Four years ago, with great unanimity, we have already declared ourselves in favour of international communities of a new form. So it is fully in line with this development that we provide for this in more detail.'[185]

Compared to the argument as presented by Beel, it stands out that Serrarens chose to base his argument on a specific act of parliament, of four years earlier: the adoption of the motion Van der Goes van Naters/Serrarens of 1948. Interestingly, this declaration of intent to contribute to 'a real legal community of democratic states in a federal structure, in which power should be assigned to one or more supranational organs' was presented here as the starting point of a tradition that should be upheld. In rhetorical terms, Serrarens applied an argument of succession: approval of the motion in 1948 was presented as sufficient reason to approve of the constitutional reform, because – in Serrarens' perception – the latter served the goal as it had been set by the first.[186]

This view of the constitutional reform served as the essential basis on which Serrarens tried to reach approval amongst the parliamentarians that opposed the reform in first instance. He tried to enforce his argument of succession by invoking a series of values that he presumed to be shared by a majority in parliament. As can be deduced from the quote, the values on which the KVP-spokesman built his argument were that anticipatingly settling matters was a good thing, that it was good for the Netherlands to take the lead, that building a new international community was necessary and that this building was in line with Dutch traditions which needed to be upheld. In particular the rhetorical emphasis on the first two of these values appear to have been an attempt to link up with prominent *topoi* in the mindset of the political elite of the land of Grotius.

The effectiveness of Serrarens' rhetorical attempt to convince his parliamentary audience to regard the constitutional reform as a means to reach the goal of a new international community, can only be ascertained from the reaction of the parliamentary audience in the debate. Serrarens' rhetorical goal would only have been achieved if his line of argument resulted in an agreement between him and (a majority of) his audience on the possible motives of action, their pertinence and their probability in a given context.[187] In particular the pertinence of his argument was challenged by antagonists of the constitutional reform. Whereas Serrarens' constitutional conception was supported

by some,[188] the fierce arguments in favour of an inviolable national constitution as cited earlier in this section, show that Serrarens might have underestimated the essential dissension that existed within parliament on this point.

It is all the more interesting, however, that other elements from Serrarens' line of reasoning, met with great approval. The image of an international legal order that was developing and the pioneer role that was reserved for Grotius' descendants, were broadly accepted. Although it was contested if, how, and to what extent such a legal order had in fact developed already, the idea that the Netherlands should take a leading role in extending it, was widely embraced. The contribution of the influential senator for the CHU, Rommert Pollema, shows that for this party, the retrieval of a prominent role of the Netherlands on the world stage – a role that befitted the historically grown ideas of a political majority on how to serve the interests of the country – was valued over any doubts that existed with regard to the constitutional reform as proposed by the government. Recovering the national honour after the humiliation of the war was a crucial element in his considerations:

> 'The concept of an international legal order, which is repeatedly mentioned in the government's proposal, is in our view something fluid.[…]. But […] nevertheless, our party has decided to give its vote to the government's proposal[…] [we] hope that the result of our common effort may be that the Netherlands will not be the victim of the international legal order but will hold a creditable, independent position in it'[189]

The KVP also voted in favour of the constitutional reform because it was considered as a means to reach the objective of an international legal community; an objective to which the KVP adhered greatly:

> '[they] [the MPs of the KVP] accept this draft, […] especially because they see it as a symptom of the growing international legal order and expect it, when it has been agreed to, to stimulate that growth vigorously. [190]

In the contribution of Jaap Burger, the prominent leader of the social-democrats in the Lower House, the same fundamental attitude towards the constitutional reform is recognized.

> '[…] here it is expressed in our Constitution, that even our national community is no more than a means to a goal, a higher goal. May that thought permeate into our social, cultural and spiritual life and also in other relations and associations, in order that, rather than the organizational associations by which the aim is sought after, the aim itself [in the view of Burger: international integration, whether in a Benelux, European or Atlantic context] gets pride of place.'[191]

In emphasising the importance of the development of a new international legal order and the role of the proposed constitutional reform in establishing that goal, these parliamentarians chose to push the issue of parliamentary control to the background. No longer was parliamentary control the essential issue of the constitutional reform, but the creation of an international legal order, considered necessary for the further existence and post-war reconstruction of the Netherlands; an objective for which the introduction of the new constitutional articles were considered important, if not crucial. This objective motivated many in parliament to vote in favour of the constitutional reform.

The ARP remained persistent in focusing on the democratic procedures. In the first reading, this party insisted on amendment of Article 60(c). It refused to let this article become a general permission to deviate from the constitution in international agreements, whenever government would feel like it. An editorial change was proposed and adopted with a large majority. No longer did the contested article open with the provision that 'in the interest of the international legal order there may be a departure from the constitution', but stated instead that 'if the development of the international legal order should require it, there may be a deviation from the constitution.'[192] This subtle rephrasing, considered by the ARP to provide a stricter condition for deviation from the constitution, led this party to vote in favour of the proposed constitutional reform in matters concerning foreign affairs. Also other parties in the Lower House, among which the VVD and the KVP, insisted on editorial amendments. As a consequence, it was among other things laid down in article 60(a) that the request of one fifth of the constitutional number of one of both Houses would be sufficient to demand that an agreement signed by government would be presented to parliament for explicit approval.[193] And in Article 60(b) it was recorded that in case provisions of the constitution were deviated from, parliamentary approval – whether explicitly or tacitly given – was obligatory. Jos Serrarens (KVP) insisted on the explicit

recording of the primacy of international law over national law.[194] Eventually, this was laid down in a new Article 60(d), reading 'that legal regulations in force within the realm do not apply in case they are incompatible with international treaties.'[195] It was another crucial element in constitutionally fortifying the international orientation of the Netherlands, added to the constitutional reform rather last minute and without much debate.

Except for this final amendment, most amendments were clearly aimed at strengthening the democratic position of parliament. Their submission in itself, is a clear indication that the concerns on the effect of the constitutional reform for the parliamentary ability to control the government, were tenacious. In the light of these persistent concerns, it is all the more telling that on 19 March 1952, bill 2374 that proposed constitutional reform concerning the provision on foreign affairs was in the first reading adopted in the Lower House by a majority of 72 to 10. In balancing the concerns regarding democracy and the benefits of the constitutional order in developing an international order, the latter consideration had been given priority by a large majority in parliament. Predictably, the dissenting votes came from the ranks of the CPN and of the small conservative Calvinist party of the *Staatkundig Gereformeerde Partij* (SGP) in the Lower House. The latter had played a minor role in the parliamentary debate, but – similar to the CPN – opposed the conferral of sovereignty on a supranational level on ideological grounds.[196]

In the Upper House, on 7 May 1952, the bill was passed with a majority of 44 to 5 votes. Here, the opposition was composed of CPN-members and – surprisingly – two liberal VVD senators. This party was divided amongst itself. The liberal senators Louwes and De Vos van Steenwijk remained principally against the handing over of national powers to an international legal order that was in their view vague and far from concrete. However, within the VVD they represented a minority. In respectively December 1952 and May 1953 the divisions in the second reading in the Lower and Upper House ended respectively in 66 and 37 votes in favour, against 6 and 4 negative votes: the communist and liberal strongholds of resistance had not been convinced. Following the approval, the articles previously indicated with numbers 60-60(g) were recorded in the Dutch constitution as articles 60-67.

Thus, in the Netherlands in 1953 the principle of an inviolable constitution was sacrificed for the uncertain principle of the development of an international legal order. By its vote in favour of the reform, the Dutch political majority in parliament expressed that it was willing to sacrifice the notion of a constitution as an 'armour of

sovereignty'. By doing this, also a fundamental democratic safeguard was sacrificed: a process of a second reading in case an international treaty would interfere with the Dutch constitutional order. In exchange for yielding this democratic safeguard, the Netherlands also gained a new characteristic. With the constitutional reform of 1953, the Dutch political community fundamentally defined itself as an open polity. It was the point of departure from which the Netherlands would approach the process of European integration in the years to come.

However, In 1953, it was still hard to imagine what kinds of results or difficulties this would lead to. The development of an international legal order – let alone the concept of European integration – was still in its infancy. The qualitative difference between the concepts of international/European cooperation and integration was not yet clear. Many parliamentary debates on the transference of sovereignty were still to come. Only time would tell how the constitutional reform of 1953 would function in the parliamentary practice of the Netherlands as a catalyst for moving further towards a unified Europe. In hindsight, however, one thing is clear: with the constitutional reform of 1953, the floodgates had been thrown open.

Chapter 2
Confirming the Course 1953—1957

'In the constitutional revision of 1953 we have explicitly laid down the power to do this.'

Pieter Oud[197]

2.1 Introduction

While the Dutch parliament was discussing the proposal for a constitutional revision, the leaders of the Six were already one step ahead. On 27 May 1952, they signed the Treaty establishing the European Defence Community (EDC). Prompted by the start of the Korean War in 1950, Western Europe and the United States (US) had increasingly felt the need to set up a common European defence organisation against a possible Soviet attack. Driven simultaneously by the desire to control the military development of the German Federal Republic, the French government came up with the *Pleven Plan* (1950) – called after its author, prime minister René Pleven – to strengthen the military power of the states of Western Europe. It served as the basis for the EDC.

With the ECSC installed and the EDC Treaty signed, the development of the idea of European integration gained momentum. A link was presupposed between the notion of integration in defence matters – historically a policy area strongly associated with national political sovereignty – and political integration. Therefore, while the establishment of the EDC was being debated, plans for establishing a European Political Community (EPC) came up as well.[198] A setback for the progress of European integration occurred, however, when in

August 1954 it turned out that the French parliament refused to ratify the EDC Treaty.[199] Irrespective of the exact French considerations, this rejection implied that the plans for the establishment of the EDC and EPC were shelved for the time being. However, the desire for further integration was not tempered. Throughout Europe advocates of European integration reacted to the *échec* of the EDC and EPC with a re-launch of the ideal of European integration.[200]

In April 1955 Johan Willem Beyen, a former Dutch banker who was convinced of the advantages of European integration for the Netherlands and who had been appointed Minister of Foreign Affairs in September 1952, presented his plan for the establishment of a European Economic Union to the governments of Belgium and Luxemburg. Together, the three Benelux countries agreed on a proposal for the establishment of a Common Market and an atomic pool, led by 'common authorities'.[201] At the Messina Conference of June 1955 important elements from the 'Benelux-memorandum', were adopted by the Six.[202] Europe's founding fathers agreed to pursue further economic integration in order to bring European unification closer. From this agreement, the Treaties Establishing the European Economic Community (EEC) and Euratom developed. Signed by the Six on 25 March 1957 in Rome, these Treaties went down in history as the Treaties of Rome. In the various initiatives for European unification that followed the establishment of the ECSC, the Netherlands took a supportive stance. With Beyen taking the initiative for reaching agreement on economic integration, the Netherlands could even be seen a leading pioneer.

The years between the coming into effect of the constitutional revision in the Netherlands and the approval of the Treaties of Rome, were crucial for defining the Dutch approach towards the process of European integration. The parliamentary debates on the EDC and the Treaties of Rome show how the Dutch political community consolidated its approach towards the process of European integration as it had been initiated with the motion Van der Goes van Naters/ Serrarans (1948), the approval of the ECSC Treaty (1952) and the constitutional revision (1953). In the new phase, the majority consensus on the instrumentality of European unification for the vital interests of the Netherlands was further built on. The consideration that sacrificing state sovereignty would pay off in terms of economic and security gains remained central in the considerations of a parliamentary majority when voting in favour of new steps towards unification. It reveals that a political majority still viewed the process of European integration

as a foreign policy project, aimed at guaranteeing the interests of the Netherlands.

A striking new element in the line of argumentation of this majority was that the decisions made in favour of European integration in the previous years, were – in themselves – reasons for approving new steps. Thus, a dynamism was cranked up in which new steps in the process were justified on the basis of earlier actions. It turned out to be an effective strategy for bringing the process of European integration further, but it also came with a risk. By making new developments towards integration self-evident on the basis of previous steps, the Dutch political community to an important extent refrained from thoroughly debating and reflecting on the nature of the process of European integration and the consequences that it would ultimately entail for the Netherlands as a sovereign country on the international stage.

2.2 Defining the Scope of Article 63: Debating the EDC (1953)

The EDC, with its focus on European cooperation in matters of defence, was designed to be complementary to organisations, such as the UN, NATO and WEU, which had also been established to maintain international peace.[203] The latter organisations were typically intergovernmental in character. In these institutions the decision making power ultimately rested with the Member States, whereas the EDC was to function primarily as a supranational institution. In addition to an intergovernmental Council of Ministers, the Community would consist of a supranational executive commission, joint armed forces and a common budget.[204] The supranational set up presupposed the transfer of national sovereignty in military affairs.

Position of the government

On behalf of the Netherlands, the liberal Minister of Foreign Affairs in the second Drees cabinet, Dirk Stikker, had signed the EDC Treaty in 1952. Elections in June, led to the swearing in of the third Drees cabinet (1952-1956) in September 1952, in which the ARP replaced the VVD. As Stikker's successor, Johan Willem Beyen became responsible for European Affairs. For two reasons, his position was rather curious. Firstly, he was not affiliated with any political party in the Netherlands. Secondly, he needed to tolerate another Minister next to him, since matters concerning Benelux and bilateral matters were left to the *second* Minister of Foreign Affairs, the eccentric Roman-Catholic former

diplomat Joseph Luns (KVP). Differences in character, fields of interests and views on international politics – Beyen was considered a true European, whereas Luns has been characterised as an Atlanticist *pur sang* – were reasons why these two did not get on very well together.[205] In the EDC debate, Beyen became the central person speaking on behalf of the government.

In line with its positioning in the debate on the ECSC, the Dutch government accounted for its signing of the EDC Treaty more in instrumentalist than in idealist terms.[206] Rich integrationist rhetoric cannot be found in their reasoning. The cabinet regarded the EDC Treaty first and foremost as a means of controlling German rearmament; a thing that was deemed necessary for the defence of Western Europe against a Soviet invasion. An added benefit of controlled rearmament of Germany was that it was expected to remove the tension between the historical rivals Germany and France. Because of this stabilising effect for the relations in Western Europe the Drees cabinet advised parliament to approve the Treaty.[207] In line with what it had argued in relation to the establishment of the ECSC, the cabinet presented participation in the EDC as vital for the safety of the small country of the Netherlands: 'For our safety we have to rely on the help of others and are […] compelled to associate with others.'[208]

In addition to this argument of necessity, founded here on safety considerations, the government depicted support for the treaty as being in line with earlier decisions on grounds of security when the Netherlands had joined the international defence initiatives of the WEU and NATO. It was an argument of consistency, which was further elaborated on. Historical preferences of the Netherlands were referred to in order to convince parliament that approving the EDC Treaty was the right thing to do. 'Ever since the Napoleonic wars', the government stated, 'Dutch foreign policies have been firmly aimed at cultivating the best of relations with the Great Powers of Western Europe.'[209] In this way, the *topos* of the land of Grotius was applied in order to convince parliament of the value of the EDC. Any possible qualitative difference between the supranational, integrative characteristics of the EDC on the one hand, and the intergovernmental, cooperative nature of NATO and the WEU on the other, which would have showed the weakness of the consistency argument, was not put forward.

At the same time consistency with the stance of the Benelux-partners was propagated.[210] Since Belgium and Luxemburg – 'countries with which we are striving with persistence and with conviction for an ever closer political and economic union' intended to join the EDC, the government argued, the Netherlands should join as well in order

not to harm the Benelux-pact.[211] The government did not enter into the fact that political and economic unification in a Benelux-context – a framework in which three relatively small countries pursued similar goals – was something completely different from taking part in a defence community with political powers such as France and Germany. The latter further-reaching and experimental partnership was indeed presented as to logically befit the objectives of the first.

As far as the political set up of parliament was concerned, the government did not need to anticipate fierce resistance. The centre of political power still lay with the PvdA and KVP; parties that both held a distinct preference for European integration and together made up 60% of the seats in the Lower House.[212] In the ranks of the CHU, the VVD – both coalition parties – and also in the ARP, some additional supporters of the concept of European unification could be found. Besides, in its positive evaluation of the EDC initiative, the third Drees cabinet knew itself supported in the public intellectual debate in which advocates of European federalisation still set the tone. From 1953 to 1957 onwards – very similar to the years 1948-1953 – the Europe-idealists of the first hour continued preaching their gospel of the benefit and necessity of a united Europe.[213] They welcomed the EDC as a step on the way towards this goal. The few critics who pointed out the shortcomings of the integration process – for instance, the absence of the UK, the long preferred partner of the Netherlands in matters of foreign affairs – would not greatly influence the tendency of the debate. And classic nationalist positions remained absent in the Dutch public intellectual debate on European integration.[214]

Yet the government – following from the constitutional revision that had recently been approved – had to reckon with one possible barrier to a quick approval of the EDC Treaty. Now that the new articles in the constitution had come into effect and in case a parliamentary majority would find that the provisions of a treaty were at variance with the constitution of the Netherlands, the treaty at stake – in accordance with Article 63 of the Constitution (draft Article 60(c)) – needed to be approved with a special, i.e. a two-thirds majority. In political practice, however, such a complicated approval procedure was not preferable for the government, which, in its capacity as a signatory party to the treaty, had an interest in a quick and simple approval. Thus, after the constitutional amendment of 1953, a situation arose in which it was beneficial to the government to convince parliament that the provisions of a treaty did not deviate from the national constitution, in order to guarantee a simple approval procedure in accordance with Article 60, subsection 2 of the Dutch constitution.[215]

In the case of the EDC Treaty, the government had already lost this battle before the plenary debate in parliament had even started out. Despite the initial proposal of the government to approve the treaty via the simple procedure of Article 60, subsection 2, it was, under pressure of parliament, forced to reconsider this position in the course of the preparation for the parliamentary debate.[216] The articles 194 and 195 of the Dutch Constitution (1953) regulated military service for Dutch citizens in the Netherlands. According to a parliamentary majority these provisions did not cover the existence of a European army and, moreover, they were explained as to prohibit compulsory military service in an army not belonging to the Dutch armed forces.[217] For that reason, parliament deemed it essential to get a two-thirds majority on board before the EDC Treaty could enter into force.

Debate in parliament

In the Lower House the plenary debate on the EDC Treaty took place on 22 and 23 July 1953. Already in the written preparations to the debate, a considerable part of parliament had agreed on the need of strengthening military cooperation in Western Europe and getting Germany militarily on its feet again. As far as the plans for the EDC were in accordance with these goals, the initiative was immediately welcomed by these MPs.[218] Similar to the view of the government, they perceived the EDC as a necessity, essentially contributing to the political and economic well-being of the Netherlands.[219] A small country, it was reasoned, depended on stable international relations;[220] a thing that the EDC, as a step forward in the process of European integration, would fundamentally add to.[221]

This line of reasoning shows that the process of European integration and the EDC as an element of it, was regarded as a strategy to reach mutually benefiting agreements with international partners. At this point in time, still no clear distinction was made between 'regular' intergovernmental agreements and an accord such as the EDC requiring the signatory parties to transfer (parts of) their sovereignty to a supranational level of governance. This is illustrated by the way these MPs dealt with the counter-arguments. Refutations concerning the dangers for a small country to sacrifice its sovereignty and to put itself in the hands of a defence community dominated by bigger powers, were brushed aside with the argument that steps contributing the federalisation of Europe would bring strong legal safeguards for the Netherlands.[222] In other words, these MPs started from the supposition that within a unified Europe the tendency of the big powers of Europe

to dominate could be restrained by treaty law, leaving the Netherlands more influential than when staying independent.

Many of the outright supporters of the treaty were PvdA and KVP members. These parties held the most explicit federal views with regard to the completion of the integration process. But also large parts of the VVD, CHU and ARP tended towards a pro-integration attitude as a matter of principle. Only a small group of MPs rejected the tenor of the treaty immediately and unequivocally because of fundamental objections against the notion of European integration. Pieter Gerbrandy, the anti-revolutionary critic of the integration process, stood ill-disposed towards the transfer of state sovereignty in general, and towards military sovereignty in particular. Not only would the Netherlands lose control of its army, he contended, also the 'national character of the state, the way it had developed in the course of history' would be affected.[223] The Dutch entering into a military alliance in which traditional overseas allies of the Netherlands – such as the United Kingdom, but also Norway and Denmark – would not take part was, in Gerbrandy's view, a 'corrosion of the marrow of the Dutch State.'[224] He represented the traditional position of having a national army under its command as a basic condition for the sovereign state of the Netherlands to be respected as such.

In addition to Gerbrandy and in accordance with their position in the debates on the ECSC and the process of constitutional revision, the Communist MPs opposed the establishment of the EDC. Whereas the advocates of the treaty presented the EDC as a necessary means for safeguarding the security and independence of the Netherlands, the CPN framed the EDC in terms of a new occupation. To this party it was 'nothing else but camouflage of the rehabilitated Nazi-Wehrmacht.'[225] The Communist MPs also argued that the rearmament of Germany, supported by the USA, would produce a reverse effect, inevitably leading to a new French-German war 'in which the Netherlands will be the battlefield.'[226] Not very surprisingly, this view found little response in the broader circles of parliament, which had generally agreed that the EDC was rather to be seen as the creation of an ally than as an enemy.

In an ultimate attempt to convince the other parties in parliament of the need to get rid of the treaty, the Communist opposition stepped into the breach for the preservation of what it presented as essential constitutional values of the Netherlands. In doing this, the CPN brought the new Article 63 of the Dutch constitution again up for discussion. What was the scope of this article? What did it actually imply? Did it cover all deviations from the Dutch constitution or only some? The answer to these questions could only be found by exploring the limits

of its applicability in parliamentary practice; a thing that the CPN was most willing to do.

In the Communist view, approval of the EDC signified the unconstitutional removal of essential elements of Dutch sovereignty. This became particularly concrete in the changes that the treaty proposed with regard to the parliamentary right to approve the national defence budget. Under the treaty the competence to decide on the EDC budget as a whole, and on the contributions of the individual Member States, lay with the Council of Ministers. The decision making power of this intergovernmental body within the supranational EDC would make decent control of the national parliaments on these matters impossible. For the Communists this signified not a *deviation from* the Dutch constitution, covered by the new Article 63 of the Dutch Constitution, *but* a blunt *violation* of the essence of state sovereignty and the parliamentary right to approve the national budget.[227] Implicit in this argument was an understanding of the constitutional reform of 1953 as a vehicle for the transfer of a certain elements of national sovereignty, but certainly not as a *carte blanche*.

Already in May 1953, during the last Upper House meeting on approval of the constitutional revision, the Communist senator Cor Geugjes had commented that the draft of the EDC Treaty seemed to conflict with earlier promises of the Dutch government to parliament. In reference to a statement of Minister Dirk Stikker on the EDC negotiations in February 1952, Geugjes pointed out that Stikker had said that: "the Netherlands will remain sovereign on the budget of Defence."[228] He was disappointed to see that the content of the draft treaty showed a different reality, namely that: 'it shall be incumbent upon the government of each Member State to ensure the inclusion of the amount determined as its contribution in its budget.'[229] Effectively, Geugjes concluded, this heralded the end of the parliamentary right to approve the budget.[230] On 22 July 1953, Geugjes' colleague in the Lower House, Gerben Wagenaar, repeated this argument.[231] On this basis, the CPN advised the Lower House to vote against the Treaty.

Explicit support for the Communist observation came from the KNP. Charles Welter rephrased it as an important diminishing 'of the exertion of one of the most important rights which in democratically governed countries has been granted to the representatives of the people.'[232] In his objections against the treaty Welter even went beyond the CPN. He reminded the House of the constitutional stipulation – added rather last minute to Article 63 by means of the amendment proposed by the ARP – [233] that laid down that deviation from the Constitution was legitimate only in case the development of

the international legal order required that. With regard to the Bill of approval of the EDC Treaty, the question could be raised whether one could speak of a deviation required by the international legal order? 'What legal order?', thus Welter argued. 'I do not know that legal order. That legal order is still to come, it does not exist yet. And if there is no legal order, how can one speak of a development of a legal order that does not exist?'[234] Building on this observation, Welter reached the conclusion that the Bill of approval concerning the EDC Treaty was not covered by Article 63 of the Dutch Constitution: 'To say the very least, it is at great variance with it.'[235]

The objections of Geugjes, Wagenaar and Welter indicate that, in spite of the fact that Article 63 had been approved by a parliamentary majority and was now recorded in the Dutch Constitution, the exact interpretation of the provision was still contested. The rationale of the Dutch government for proposing the article at the time of amendment of the constitution had been to facilitate its freedom to decide and act in the practice of international treaty making. After this article had entered into force, the Dutch constitution could not form an unwelcome obstruction in the process of European integration. Or so it had been expected. Now it turned out that even after the approval of Article 63, the political adversaries of unification in Western-Europe found a way to question the compatibility of this process with the Dutch constitution. They claimed that Article 63 could not be understood as to make all deviations from the Dutch constitution irrelevant. Their viewpoint was that certain deviations – such as the departure from the right of the national parliament to approve the defence budget – were so sweeping that they should not be possible. In other words, their striving for re-determining the meaning and scope of Article 63 was opened. Re-defining its basic terms, such as 'international legal order' and 'requires', was proposed, in order to support this objective.

From defence towards consensus

The reactions of the government and the rest of parliament to the objections of the CPN and KNP made immediately clear that these parties would lose out in the debate. In reaction to Welter's interpretation of the requirement-stipulation in Article 63, Minister Beyen sardonically remarked 'I had not thought of that one.'[236] In an argument that took the international legal order and the constitutional debates of 1953 as *faits accomplis*, he made clear that he viewed it as plain nonsense to claim that an international legal order did not exist or had not been developed and could therefore not require anything: 'If development of the international legal order does not exist, there is

nothing more to say. Then I do not understand why we have been busy with that amendment of the Constitution [and] why we have gathered here […].'[237] Moreover, Beyen stated that Wagenaar's stance, that the EDC Treaty conflicted with the constitution was not valid. Before the constitutional revision of 1953 the handing over of sovereignty might have signified an insurmountable break with the constitution. Now, Article 63 filled the gap.[238]

The diverging views of Beyen and his opponents reveal a fundamental difference in their respective observations of what had happened – both on the European stage and in the Dutch constitution – in the years before. In the eyes of the first the developing international legal order was a reality. The debate on the establishment of the EDC was itself an indication of it, just like the recent implementation of the constitutional reform. As far as Charles Welter was concerned, however, the international legal order existed only to the extent that the Dutch parliament chose it to exist. It could be called a halt to if and when the Dutch government and parliament decided to do so. It should be called a halt to in case it threatened the sovereign legal order of the Netherlands. And, if matters depended upon him, it would be called a halt to here.

The discussion clearly shows how in 1953 diverging political wishes with regard to the process of European unification were crucial for the perception on the political agenda. For those hesitant to bring about an international legal order, Charles Welter most certainly had a lead when he referred to the 'requirement'-condition laid down in Article 63, as a viable reason for not approving the treaty. Indeed, whether the development of such a legal order required deviation from the Dutch constitutional articles dealing with military affairs, was not necessarily obvious. In the setting of the Dutch parliament of 1953, however, such a question did not find fertile ground. A basic consensus existed with a parliamentary majority that the design of the EDC complemented the earlier policy decisions on the road to European integration, such as the ECSC and the Van de Goes van Naters/Serrarens motion, and should therefore be approved. Moreover, Dutch participation was deemed crucial for strategic considerations of international politics and security. The necessity and consistency argument, to put it differently, were sufficient to find consent.

As far as the constitutionality of the treaty was concerned, it was contentedly diagnosed by a parliamentary majority that – by foresight – the Netherlands, through the recent addition of Articles 63 and 67 in the Constitution, had already made arrangements for the transference of sovereignty and for international treaties that conflicted with the

national constitution.[239] Any further discussion on the constitutionality of the treaty was considered superfluous. More than merely implying the approval of the EDC Treaty, a majority taking this position shows that the constitutional reform found its interpretation in parliamentary practice here. By taking this stance, it actually – and this was crucial – agreed to interpret Articles 63 and 67 of the Dutch constitution as to make it impossible for a treaty contributing to the international legal order to violate the Dutch constitution in such a way that it should be rejected for that reason. Since these articles, in principle, legitimated all conceivable deviations from the Dutch constitution, all treaties benefiting the international order – regardless of their constitutional implications – could be brought up for approval under these articles.

What was not paid attention to, however, was that this interpretation also implied that determining whether or not an international treaty deviated from the Dutch constitution became irrelevant if not practically impossible. Since all deviations were henceforth defendable as long as they were – by a simple majority – perceived to be contributing to the international legal order, no treaty could ever be rejected on grounds of violating the Dutch constitution. This gave the government a nearly endless freedom in international negotiations and in the results it could bring home to parliament.

The Klompé amendment

Notwithstanding this majority agreement on the broad interpretation of Article 63, supporters of the EDC Treaty in parliament were also cautious. In order not to allow Article 63 to develop into a *carte blanche*, a significant restriction, working in favour of parliamentary control, was imposed on the government. According to MPs of KVP, VVD and ARP, the democratic character of the Defence Community left much to be desired as many decisions were left to the competence of the Council of Ministers, or even to NATO, the latter being the bigger military alliance in which the EDC would take part.[240] Although the establishment of an EDC parliament was foreseen in the treaty, its competence to control the Council of Ministers was deemed unsatisfactory.[241] An important objection was – and here the supporters of the treaty even joined the Communists – that the disappearance of parliamentary participation in the settling of the national defence budget was not compensated for on the European level; a functional supranational parliament with sufficient democratic competences was lacking.[242]

In particular, the coming into being of so called 'implementation agreements' [in Dutch: *uitvoeringsovereenkomsten*], once the treaty had been approved, caused frowning eyebrows with many Dutch

MPs. In the setup of the EDC, the supranational organisation itself – its executive organ – would be invested with the power to decide on the future functioning of the EDC by devising agreements on how the Treaty needed to be implemented. If these agreements were not explicitly subjected to the control of the national parliament, the Dutch parliamentarians worried, the EDC was given a free hand in the obligations it imposed on the Netherlands. In order to prevent such an undesired situation, the prominent MP for the KVP and member of the ECSC *Assemblée,* Marga Klompé, introduced an amendment for approval in the Lower House. This 'Klompé amendment' suggested the insertion of an article in the Dutch Bill of Approval on the EDC Treaty that stated that in case the implementation of the Treaty needed the conclusion of further agreements, these agreements should be presented for approval to the States-General.[243]

In fact, this amendment was a restriction in the sense of the new Article 62, subsection *b* of the Dutch constitution, which stated that approval of the States-General was not required 'if the agreement exclusively concerns the implementation or extension of an agreement which has been approved, as far as the States-General on approval have made no reservations on this.' The rationale of the proposal was to prevent parliamentary approval of the treaty as a whole from automatically implying approval of implementation agreements resulting from it. In an extreme case such an implementation agreement resulting from the treaty could in its turn deviate from the constitution. In order for parliament not to lose sight of the effects of the EDC Treaty, an extra guarantee for parliamentary control was asked for. The Klompé amendment was intended to establish such a control mechanism.[244]

Not surprisingly, the Dutch government – supported by the PvdA and CHU – strongly advised against the adoption of the amendment. In line with the debates on the constitutional reform, it argued – again – that freedom of action was indispensible for government in case international politics was at stake. Curtailing this freedom, would hamper the ability of the government to strive after the interests of the country or in the words of Prime-Minister Willem Drees: 'the Government will find itself in a difficult position with regard to certain agreements, when it has to take the view that the national interest requires an immediate decision and that therefore the Government must go its own way.'[245] This instrumental argument of necessity for freedom of the government, strikingly started again from the notion that the government, in first instance, determined what exactly was in the interest of the Netherland. The national parliament was to be heard on this only later.

A second, but related reason for Drees to dissuade parliament from adopting the amendment was the fear of the creation of a precedent. With regard to the implementation of future international or European treaties, the government did not applaud the idea of such restrictions. Hendrik Tilanus, leader of the CHU in parliament, supported Drees. He warned against parliamentary obstruction of the well-functioning of the newly designed supranational institution. He expressed the fear that adoption of the amendment would lead to various unwished for legal difficulties, impeding the well functioning of the EDC and the integration process as a whole.[246] Again, it stands out that the national parliament was presented as an obstruction rather than a patron for the interests of the Netherlands.

Drees and his followers, however, did not find strong enough support. Although a broad political spectrum agreed on the necessity or even parliamentary obligation of approving the EDC Treaty because of the conviction that the post-war era asked for a supranational approach in defence,[247] abandoning the amendment was judged to be a bridge too far. A majority in parliament turned out to draw the line with what had seemed an almost unrestrained trust in the government to serve the interests of the Netherlands abroad, at the point that this trust implied that new international (implementation) agreements would not even be presented to parliament. A supporting line of argument for adopting the amendment was found in the practical consideration that the suggestion of Klompé would not hamper the functioning of the EDC as much as feared by Drees and Tilanus. Delays, especially in urgent cases, the supporters of the amendment reasoned, could be prevented through the application of the tacit consent clause as it had recently been laid down in Article 61 of the Dutch Constitution.[248]

On 23 July 1953 the Klompé amendment was adopted by the Lower House with 54 to 31 votes.[249] Most of the negative votes were produced by the PvdA, which had rejected the amendment from the start, together with some from the CHU. With the adoption of the amendment, in the particular case of the EDC Treaty the scope of Article 63 was redefined in favour of parliamentary control. Deviating from the national constitution was allowed, but the national parliament should not be deprived of its right to judge all international agreements before they would enter into force. The EDC Treaty was voted on immediately after the adoption of the Klompé amendment. In the Lower House, it was supported by a majority of 75 to 11. Only the CPN, SGP and Pieter Gerbrandy (ARP) voted against.[250] Approval of the treaty in the Upper House, followed on 20 January 1954. The vote resulted in a 36 to 4

majority in favour.[251] Thus, the required two-thirds majority for the EDC Treaty was reached in both Houses.

With the approval of the EDC Treaty the Dutch political community continued the pro-European integration policy it had pursued since the adoption of the motion Van der Goes van Naters/Serrarens (1948) and which has been supported by the constitutional revision of 1953. The signing and approval of the treaty was first and foremost the product of instrumental reasoning: participation of the Netherlands was perceived as a necessity for the continued security and well-being of the Netherlands. Moreover, it was considered to be consistent – and therefore approvable – with the earlier choices of the Netherlands in favour of military integration in a Benelux and a broader international context. So in addition to necessity, policy consistency was also a consideration in the mindset of the parliamentary majority to continue on its pro-European course.

Both lines of argument illustrate that, instead of being perceived as a completely new and experimental concept, coming with real and relevant risks, the process of European integration was presented and accepted by a political majority as a continuation of what the Netherlands had ages of experience with: instrumental internationalism. Although it was acknowledged that the means were new – never before had the Netherlands joined in supranational organisations on which it conferred military sovereignty – the ground-breaking character of the integration process was never discussed as such. It stands out that a broad majority in the Dutch parliament was gladly willing to hand over national sovereignty and national parliamentary control as long as this would pay off in terms of economic and political security for the Netherlands. This way of thinking, in which there was hardly any room for the fundamental objections of the CPN, SGP and the like, based on considerations of national sovereignty, befitted the land of Grotius that had a long tradition of believing that the sovereignty of the Dutch state was only there as long as it was granted by the international community.

The parliamentary debate on approval of the EDC Treaty is particularly interesting in shedding light on the extent to which the political majority was willing to yield its control on the national constitution – considered in many other countries a strong symbol and safeguard of national legal sovereignty –[252] in order for the EDC to get off the ground. A majority of the Dutch parliament was ready to interpret the Article 63 as allowing a departure from its right to control the national defence budget. In fact, by doing so, it voluntarily yielded this right. It strikingly shows how the early post-war determination of

the Dutch parliament to strengthen its democratic competences in the field of treaty making gave way in favour of the coming into being of a new European institution. It is indicative of the strong belief, existent with a firm parliamentary majority, in the benefits of the still very new and unpredictable process of European integration. To be sure, the tabling and approval of the Klompé amendment, shows that democratic concerns were still present. The explicit attention for the parliamentary right of approval of implementation agreements following from the EDC Treaty, however, could not alter the fact that an important safeguard for strong democratic control had been given away by directly opening up the Dutch constitutional order for international treaty law by means of Article 63.

2.3 Submission to Progressive Integration: the Treaties of Rome (1957)

With the elimination of the bill of approval of the treaty from the French parliamentary agenda in August 1954, the history of the EDC ended different from what the Dutch parliament had anticipated. Consequently, at least for the time being, it kept its say on the national military budget. This development was not mourned about in Dutch governmental circles. The Drees cabinet had never univocally embraced the notion of losing its sovereignty in this matter. It had only accepted it as necessary consequence of serving its international economic and political interest. Eventually, the rearming of the Federal Republic of Germany and its accession to NATO – two of the main objectives of the EDC Treaty – were arranged after all through an amendment of the Brussels Pact of 1948.[253] With the dropping of EDC plans, intentions for establishing a European Political Community (EPC) to form a political equivalent of the EDC, also faded away.

But the wish for new integration initiatives remained. The ever more daunting international political situation, as has been referred to in the introduction of this chapter, only fuelled the minds of the European political elites. When halfway the 1950s the Benelux-memorandum initiated by Johan Willem Beyen cranked up a *'rélance européenne',* new chances for integration developed. After a series of negotiations, and the drafting of the Spaak-report (1956)[254] these chances materialised in the signing of the Treaties Establishing the European Economic Community (EEC) and Euratom in Rome on 25 March 1957.

By means of the EEC Treaty, cooperation and harmonisation in the ECSC-field of the heavy industries was to be supplemented by

integration in areas such as customs duties, tariffs and agriculture. This implied that the scope of European activities would be largely extended, touching upon policy areas such as social affairs, migration and agriculture; fields that had until then been strongly characterised by national traditions. In fact, the Rome treaties expressed the joint ambition of the Six to integrate also in fields not directly related to the economy. The much cited preamble of the EEC Treaty, stating that the treaty functioned as the foundation of 'an ever closer union among the peoples of Europe', is a clear indication in this direction. To effectuate these ambitions, new European institutions, invested with exclusive powers, would be set up. This implied that, after having transferred such powers to the High Authority of the ECSC, the Member States again needed to delegate parts of their sovereign competences to the European or 'communitarian' level of governance.

The EEC Treaty introduced a framework for further integration, but the impact of the document depended on decisions of future leaders of the Community. The exact scope of power of the newly designed institutions was therefore not immediately clear. Nevertheless it was agreed that the EEC would have a controlling *assemblée* and an executive Commission at its disposal. In this context, it was agreed that, for the time being, the *assemblée* would have an advisory function, which implied a lack of real legislative power, and would not be directly elected. Via the Council of Ministers – again similar to the EDC design – the governments of the Member States would stay involved in the decision making process of the European Community, but only in those areas that had not already been assigned to the Commission. It is important to note that it was laid down in the EEC Treaty that after a start-up phase, as of 1970 the intergovernmentally organised Council of Ministers would start to decide by means of qualified majority voting (QMV). The Council of Ministers would thus over time develop into a supranational organ.

Whereas the EEC Treaty so far followed the institutional design of the ECSC and the EDC, it went further on one important point: the European Court of Justice (ECJ) would be invested with greater authority. Under the ECSC Treaty, the task of the court had been to keep a watchful eye on the lawfulness of the actions of the High Authority of the ECSC. After approval of the Treaties of Rome, the ECJ would also be competent to watch over an unequivocal interpretation of the law of the European Communities. Article 177 of the EEC Treaty laid down that:

> 'the Court of Justice shall have jurisdiction to give preliminary rulings concerning:

a. the interpretation of the Treaty;
b. the validity and interpretation of acts of the institutions of the Community;
c. the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.'

This provision furthermore stated that if a question of interpretation of the EEC Treaty emerged before a national court or tribunal, it could refer this question to the ECJ for a preliminary ruling thereon. It also stated that if 'any such question' was raised 'in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.' In essence, Article 177 potentially turned the ECJ into a sort of pre-Constitutional Court of the European Communities.[255] How far its competences would actually reach, could only become clear in time, but the potential integrative power of the ECJ was there as soon as the article entered into force.

Thus, the institutional changes in the Treaties of Rome implied significant consequences for the legal and political organisation of the Six. Although these states – until then sovereign lord and master in most policy areas – continued to exist, the Rome Treaties would unite them into one, bigger political community for which separate legislative, executive, and judicial powers were laid down. Seen from this perspective, the signing of the Treaties of Rome in 1957 can be marked as a crucial moment of redefinition for the political communities of the Member States. Again, the national political communities of the Six were asked to consider their European aspirations and national sovereignty. How this was done by the political elite of the Netherlands, is the subject of this section. The focus will pre-dominantly be on the EEC Treaty. It affected the Dutch polity widely in the fields of politics, economy, and law. The Euratom Treaty, that was exclusively aimed at unifying European policies in the field of nuclear energy, was far less controversial.[256] Therefore, the public and parliamentary discussions on this new step in the process of European unification primarily focused on the EEC agreements.

The position of the government

The Dutch government responsible for the signing of the Treaties of Rome and for presenting them to the Dutch parliament was the fourth and last government led by Willem Drees (1956-1958). Again it consisted of representatives of the still influential and pro-European KVP and PvdA and of the two Protestant-Christian parties of the ARP

and CHU. This time the complete office of the Minister of Foreign affairs was offered to Joseph Luns. He was to hold this post until 1971. As the first person responsible for foreign affairs, he acted as the primary defender of the new treaties in the plenary debate. Other members of the government, increasingly accountable for parts of Dutch European policy at the time, were the State Secretary of Foreign Affairs responsible for European Affairs, Ernst van der Beugel (PvdA), the Minister of Economic Affairs, Jelle Zijlstra (ARP), and the Minister of Agriculture, Sicco Mansholt (PvdA).[257] These men contributed to the debate when policy aspects of their specific field of activity were discussed.

In the explanatory memorandum, the government explicitly linked the development of the EEC Treaty to the instrumental pro-unification line that the Dutch government had set in motion shortly after the Second World War.[258] The treaty and its provisions were presented as a logical continuation of the policy line launched with the establishment of the ECSC, the failed attempts to found the EDC and the EPC, and the recent plan for a *rélance* of the European integration project. Yet, the EEC was presented as essentially different from the previous moves in the sense that it was a *decisive* step in the process. According to the government, approval of the EEC Treaty meant 'that a return is not possible any longer and that the only question which is left is how long it will take before the ultimate goal will have been reached.'[259] The government stated that the ambition to develop a federation or confederation as it had been laid down in the EDC Treaty had inspired the development of the EEC and Euratom.[260] But how that ambition related to the actual result in the Treaties was not made explicit. On the details of the final goal the Dutch government was not very explicit. Interestingly, it appears to have interpreted the objective of an 'ever closer union among the peoples of Europe' as to imply 'the strengthening of the political ties between the Member States.'[261] It underlines the basic attitude of the successive Drees governments in which the process of European integration was essentially still seen as a means for reaching cooperation *between* national states, and not as a process of moving towards one statelike association. The fourth Drees cabinet spoke of merging of economic interests, ongoing deliberations and the inevitable growth of solidarity and unity in Europe, but did not put a federal or otherwise constitutional label on the future objective.[262] This is not really to be wondered at, however, when it is considered that the Drees cabinet did not perceive the process as dealing with the formation of a new European political identity.

The necessity argument, based on economic and safety considerations, remained central. Similar to the ECSC and the EDC Treaty, approval of the EEC Treaty was presented as a 'necessary and welcome step […] on the way to European unity […].'[263] It was presented as a vital condition for the survival of Europe as a whole. It would contribute to solving the historical rivalry between France and Germany, to strengthening the voice of Europe in international politics and to normalising the relations between Germany and the rest of the Member States.[264] In doing so, the Treaty would also serve specific Dutch interests. The removal of trade barriers, the government stated, would open up new potential markets for Dutch trade and industry sectors, which was considered essential for the development of the Netherlands: 'In particular for the Dutch economy, whose prosperity, more than any other country, is so pre-eminently dependent on its export, the widening of its own market is of fundamental importance.'[265] In addition, it was argued, that certain Dutch sectors of trade and industry would also be able to profit from the higher degree of specialisation that would occur in a larger market.

It stands out in these arguments that, again, the Netherlands was singled out as a country depending – more than others – on good international relations for its economic well-being. Whereas the government admitted that the exact consequences of economic integration for the Netherlands were unpredictable – much depended on how the different sectors of trade and industry would respond to the new possibilities and to the policies that the institutions of the Community would pursue – the trust in the positive effects of joining a European economic partnership was great.[266] This line of argument shows once again that the government approached the process of European integration as instrumental to supporting particular interests of the Netherlands. There was no reasoning in favour of an integrated Europe per se.

Since, in accordance with the Dutch constitutional arrangements, the government had independently – without parliamentary consultation – negotiated on and signed the EEC treaty, much depended on the parliamentary debate on approval, in case such a debate was called for. Before the representatives of the Dutch people, the result of months of preparations and deliberations of government officials would be validated or rejected. It was to the advantage of the government that the coalition partners of the PvdA and KVP were generally enthusiastic about new steps in the process of European integration. Their vote in favour of the treaty could be counted on. The position of the parliamentary parties of the ARP and CHU was different. Both

supported the idea of a peaceful European legal order that was expected to follow from integration, but worried, on the other hand, that transferring too much sovereignty to the European level, uncontrolled and too quickly, would not be in the interest of the Netherlands.[267] In the ranks of both parties there were zealous supporters next to devoted opponents. The prime-minister of the war cabinet and now one of the most prominent ARP-members, Pieter Gerbrandy, for instance, proved to be more and more critical of the process of European integration.[268] Therefore, opposition could be expected from these parties in the plenary debate. The same held true for the opposition parties in parliament, such as the liberal VVD – in the 1950s internally divided on the European question – and the distinctly anti-European Communist CPN and the Christian-conservative SGP. These parties opposed the Treaty fiercely.

The government also needed to reckon with another form of protest that had hitherto largely been lacking. Notwithstanding the still ardent pleas of Dutch intellectual believers in the process of European integration,[269] the Treaties of Rome – the EEC Treaty in particular – were the first products of European integration to result in overt protest from influential sections of the Dutch society. Despite the positive economic effects predicted to follow from the EEC Treaty, the Dutch trade and industry sector, especially the leaders of industry and commerce in the Rotterdam region, feared an economic setback in the form of a deterioration of the Dutch trading position.[270] The details of these worries will be discussed later, but it is relevant to notice here that the existence of this public criticism, at least to some extent, influenced the course of the debate. The concerns were expressed by parliamentarians and were shared by the government.

A third difficulty for the government on the road to getting the treaty approved stemmed from the implementation of the constitutional reform in 1953, in particular the introduction of Article 63. Again, similar to the approval procedure of the EDC, it was in the interest of the government to convince parliament that the provisions of the EEC Treaty did not conflict with the Dutch constitution and could therefore be approved by a regular parliamentary majority. Since the EEC did not as explicitly conflict with the Dutch constitution as the EDC had done, the government took the plunge. In the Bill of Approval, the Treaty was presented as to be approved by a simple majority in accordance with Article 60, subsection 2 of the Dutch constitution.[271] On this point, however, the Dutch Council of State [in Dutch: *Raad van State*] – the highest advisory organ on legal matters of the Netherlands,

which was consulted before treaties were sent to parliament – immediately blew the whistle on the Dutch government.[272]

On the EEC Treaty, the Council of State remarked that: 'the Treaty itself and the accompanying conferment of national competence on international organisations imply deviations from the constitution.'[273] For that reason, it argued that Article 63 of the constitution should be applied. This would signify that approval of the treaty could only be given with a special two-thirds majority of the votes in parliament. The advice was based on two arguments. In the first place the Council considered that certain provisions in the EEC Treaty dealing with the abolition of mutual trading tariffs and restrictions, held out the prospect of considerable changes in the implementation phase of the treaty without the involvement of the national parliaments. Although this might be considered necessary from an organisational point of view, the Council observed, it also implied a break with Article 60, subsection 2 of the Dutch Constitution, which stated that all international agreements should be presented to parliament for ratification. Secondly, Article 177 of the EEC Treaty was interpreted by the Dutch Council of State as affecting the independence of the national judge. This was deemed a breach with the Dutch constitution since 'for a party concerned this may mean that he is denied the judge assigned to him by Dutch law (Article 170, subsection 1 of the Constitution [of 1953]).'[274] This objection resembled the complaint of the Communists with regard to the Court of the ECSC.[275] In 1951, the CPN had – without success – already argued that the independent position of the European court threatened the legal protection and certainty of Dutch citizens on the national level. With the authority of the European Court of Justice extended through the Treaties of Rome, the Council of State apparently considered this risk to become more real.

The government had an interest in a quick approval of the EEC Treaty. Following the Article 63 procedure was undesirably severe when compared to the lighter procedure of Article 60, subsection 2. In this context, it stands out that the government decided to disregard the recommendation of the Council of State. With regard to the first argument of the Council the government reminded parliament of the approval of the ECSC Treaty, which had been approved under the old constitution and which had not been considered a deviation from the national Constitution, although it contained similar provisions. The government claimed that the recent introduction of Article 60, subsection 2 in the Constitution could hardly be understood as to 'bring all articles of the treaty with afore-mentioned intent under the effect of the present Article 63 of the Constitution.'[276] This line of reasoning

was clearly aimed at withdrawing the treaty in question from the new constitutional arrangements because the new regulation did not come in handy here.

In reaction to the second objection of the Council on Article 177 of the EEC Treaty, the cabinet similarly rebutted that the ECSC Treaty contained a similar clause, namely Article 41. With regard to that treaty no such discussion had emerged. Moreover, the government stated that eventually it '[remains] for the national judge to decide […] in the case.'[277] Therefore, the government deemed it hard to see how Article 177 could be interpreted as to imply 'being denied the judge the law assigns to him'[278] Ultimately then, in the view of the government the conclusion could only be that the EEC Treaty should be approved by a simple majority, in accordance with Article 60, subsection 2 of the Dutch constitution.

Although the constitutional system left room for putting aside the advice of the Council of State since its advice is not formally binding, the fact that the government did so in this particular case, its clear interest in the approval procedure of Article 60, subsection 2 and its rather selective 'shopping' in the new constitutional arrangements raise the question on the political motives of the government behind these semi-logical arguments. The minutes of the meeting of the cabinet of 1 July 1950 offer a fascinating view of the considerations of Drees *cum suis*. In response to a question of the prime-minister whether the cabinet had not better decide to go along with the advice of the Council of State after all, the State Secretary of Foreign Affairs Ernst van der Beugel (PvdA) argued that this would set an undesired precedent for the approval of future European treaties.[279] To this, Minister Zijlstra of Economic Affairs (ARP) added that he was not sure whether a two-thirds majority for the EEC Treaty could be secured in the Upper House.[280] Therefore, in order for the government to be assured of the parliamentary approval of the EEC Treaty, both men advised to stick to the approval procedure as laid down in article 60, subsection 2. These observations plainly show how pragmatic political considerations in favour of approval of the EEC Treaty and future European Treaties were present in the minds of the members of the Drees IV cabinet and put prominently before pure constitutional reasoning. This underlines the vision that the government had already explicated when proposing the draft constitutional amendment to parliament in 1952: when the international interests of the Netherlands were considered to be at stake, strong and extensive procedures of democratic control needed to give ground.

At the time of the parliamentary debate on the Rome Treaties – in contrast to the post-1980 era – advice of the Council of State and the governmental reactions to it were not made public.[281] This implied – at least formally – that only the government and the Council itself knew of the discussion on the constitutionality of the EEC Treaty as it had been taking place between them. It is worth mentioning here that nowhere in the governmental communications to parliament a single word can be found on the advice of the Council of State, which had judged differently from the government in this matter of constitutionality. It raises the impression that in its presentation of the EEC Treaty to parliament the Dutch government started from the old wisdom that what the eye does not see, the heart does not grieve over.

Debate in parliament

The plenary debate on both Treaties of Rome was scheduled for October 1957. It took the Lower House no less than four days of debate – twice the time reserved for most debates – to decide on their approval. It illustrates the size and complexity of the treaties and the importance attached to them.

From the start of the approval procedure, it was clear that a majority of the Dutch MPs would support the coming into being of the EEC.[282] In the interim report that was drawn up by a preparatory parliamentary committee it was already stated that a great number of MPs of diverse political parties declared '[forthwith] that in their view the treaties ought to approved.'[283] This statement was reflected in the opening speeches of various spokesmen in the plenary debate in which the importance of approval of the treaty was emphasised.[284]

It stands out that the consensus on the approval of the treaty was built on the conviction that the EEC would yield the Netherlands economic growth. At the same time it rested on the negative belief that *not* approving the treaty would leave the Netherlands in undesired economic and political arrears compared to its European partners. Cees Hazenbosch (ARP), for instance, accounted for his approval of the EEC and that of many of his political friends on the following grounds: 'We do that […] because we clearly see both the politically and economically possible value, also for our country; negatively speaking we do that, because rejection would bring us both politically and economically in an impossible position.'[285] These arguments, both positive and negative, reveal the two sides of the instrumental mindset with which the political majority approached the process of European integration. Approval of the EEC Treaty was considered by a political majority

– again – as an economic and political necessity, in order to safeguard fundamental Dutch interests.

With a smaller group anxiety existed. The comprehensiveness of the EEC agreement and the open end of the process of European integration made various parliamentarians wonder where approval would eventually lead to. They felt uncomfortable, supporting a treaty of which the economic and political consequences were incalculable. Telling indications of this are the metaphors used by these MPs to characterise the treaty, making clear the awareness that a new and more intimate phase in the strengthening of European relations was entered into, from which going back would not be simple. Pieter Gerbrandy opposed the treaty until the end, stating that he refused to come together with Germany under one roof in a 'kind of house' and the Catholic spokesman on legal matters, Karel van Rijckevorsel, referred to the treaty as an 'indissoluble marriage'.[286] And there was also the reference to a characterization introduced by the banker and chairman of the Rotterdam Chamber of Commerce, Karel van der Mandele, in an article in *Economische Statistische Berichten* (Economic Statistical Reports) of 20 March 1957, of a 'a leap in the dark'.[287] In the parliamentary discussion of 1 October 1957 the orthodox-protestant minister Pieter Zandt was the first in parliament to qualify the treaty as such. Subsequently, in the course of the debate this classification was adopted and repeatedly used by various critics of the treaty.[288] Thus the 'leap into the dark' characterisation became a leading metaphor for those who had their doubts about the Netherlands embarking on this new form of European integration.

To a great extent the concerns of the critical MPs were economically inspired. It stands out that they repeatedly associated the concept of a single European market with economic protectionism. Those opposing the treaty foresaw rising prices of food, raw materials and semi-manufactured products. Furthermore, when compared to the external tariff the Benelux applied, the external tariffs for trading outside the Economic Community would increase.[289] This was deemed disastrous for the interests of Dutch trade and industry in Indonesia, the Netherlands' former colony. MPs of the liberal VVD and the CHU, but also various MPs from the generally pro-European KVP, warned of the danger that the Economic Community might easily develop into a protectionist 'continental bloc surrounded by a tariff wall'.[290]

This fear of creating a protectionist European bloc went deeper than merely the negative economic consequences foreseen. It was rooted in a feeling of breaking with some of the most fundamental traits that had characterised the trade policies of the land of Grotius

for hundreds of years: liberalism and free trade overseas. According to Herman van Leeuwen, the financial spokesman of the VVD, 'we', the Dutch, did not belong 'by virtue nor by our tradition, mentality and position' in a continental bloc disposed to protectionism.[291] The Dutch, he explained, would not feel happy when cut off by the walls of the Euromarket.[292]

Various parliamentarians agreed and sketched a representation of the Netherlands not compatible with a treaty as it had been presented to them. The country should remain an open country that prospered in open relations with the rest of the world.[293] This line of argument was rhetorically coloured by the CHU parliamentarian Franz Lichtenauer, who as a secretary had close links with the Chamber of Commerce in Rotterdam, and Herman Hellema, an anti-revolutionary tax specialist. These financial experts called to mind the prosperity that international trade, especially overseas, had brought the Netherlands in past centuries. Images from days long past such as the explorations of Prince *Hendrik de Zeevaarder* (1820-1879) – Hendrik the Navigator, a younger brother of King Willem III – and the prospering Dutch trade in the *Hanzesteden*, were called to mind. It was pointed out that Europe in general, and the Netherlands in particular, had always depended for its prospering trade upon overseas territories.[294] Protectionism and high external tariffs, such as foreseen by the EEC Treaty, could not be reconciled with this tradition.

Important support for the protectionist criticism came from the 'little-Europe' critics. Following the Dutch historian Pieter Geyl who had started his criticism on 'little Europe' in articles and polemics halfway the 1950s,[295] parliamentary criticism against the Europe of the Six grew. Marcus Bakker, a hard-line communist MP who seized every opportunity to repudiate the process of European integration, feared that with the adoption of the EEC Treaty a bloc of six of the approximately thirty states on the European continent would be institutionalised and would be directed against countries such as the United Kingdom and Scandinavia.[296] Here a second, for the Netherlands, delicate issue was raised. The Dutch traditional predilection for Atlantic partnerships both in the fields of economy and politics, was not easy to reconcile with a process of European integration in which the United Kingdom and other powers overseas would not take part. Bakker's words on little-Europe and anti-protectionist criticism in general, struck a sympathetic chord. Various MPs did not oppose the EEC as such, but thought that it should admit more members – the United Kingdom being the first to become

one – and develop, not in the direction of a protectionist bloc, but as a partner in a larger free-trade zone.[297]

A third historical reason for fearing a protectionist bloc of the Six, related also to the Dutch preference for Atlantic partnership, was the small country-perspective. MPs of various political denominations argued that, for a small country such as the Netherlands, giving up state responsibilities was a risk.[298] Exemplary of this viewpoint was the distinction that Pieter Gerbrandy (ARP) introduced in his speech to parliament between big and small states. Whereas the European integration process, characterised by delegating sovereignty, could be seen as 'an experiment' for big states, for the Netherlands and its 'small and law-abiding people' it was a more serious matter.[299] Based on historical experience, he referred to the dependence of the Netherlands in international affairs on the goodwill of greater powers, such as Germany and France. By reciting a wartime poem of the Dutch poet Anton van Duinkerken, recalling the trauma of Dutch serfdom during the German occupation, the former Prime Minister argued that the Netherlands should not give away its sovereignty too lightly:

'Nederlandsch is: een verleden	('[Being] Dutch is: a past)
dat ons rechten heeft geborgd.	(that has secured us rights.)
Waar wij fier vooruit mee treden	(With which we proudly step forward)
door 't geledene onbezorgd.	(not worried by the suffering of the past.)
Wordt een beet're tijd geboren,	(When better times are born,)
achter 't woeden van de strijd.	(after the furies of the struggle)
Laat dan aan de wereld hooren:	(Let the world know then:)
Dat gij Nederlanders zijt.'[300]	(That you are Dutchmen')

Gebrandy, in sum, argued that a small country such as the Netherlands should think twice before devoting itself to the construction of a protectionist bloc, ruled by greater powers such as France and Germany without the certainty that its interests were protected by an internal balance of power. Contrary to those arguing that the Dutch needed to join the EEC, Gerbrandy in fact claimed that economic and political independence was the best guarantee for serving the vital interests of the Netherlands. It was a dissonant sound, hard to bear, in the ears of a political majority with an unshakeable belief in the benefits of internationalism.

From defence towards consensus

In defence against these criticisms, representatives of the government supported by their political confederates, put in an effort to convince

the critics of approving the treaty. In answer to the qualification of the treaty as 'a leap in the dark', the government came up with a converse metaphor. It admitted that the future of the Europe of the Six was unclear, but instead of framing it in terms of darkness it chose a lighter approach: 'We now find ourselves in many ways in the dark and the treaty then rather means a transition to the dawn that may introduce the light.'[301] Trust in a good result was propagated by Joseph Luns: 'The road will often be difficult […] but it leads irresistibly to a new shaping of society among the European States, which offers the guarantee for a healthy and vital Europe, in which the Netherlands will occupy an honourable place.'[302] It befitted the majority consensus in parliament that in order to achieve a better future, the treaty should be accepted despite the unpredictable consequences it might imply.

The metaphor was rhetorically further exploited by the Minister of Economic Affairs Jelle Zijlstra. He pictured the current situation for the Netherlands as being on the upper floor of a 'smouldering house'. A jump into the safety-net of the firemen on the ground, a telling reference to the EEC Treaty, was the best advice he had.[303] Particularly interesting is Zijlstra's added comment that the jump was needed, 'even if it hurts.'[304] The fruit of economic integration – the well-being and continued existence of the Netherlands – could only be reaped, Zijlstra claimed, after a price – the yielding of (parts of) national economic sovereignty – was paid first.

In broad political circles, Zijlstra's reasoning found assent. Charles Welter (KVP), for instance, argued approvingly: '[…] the point is not whether the advantages of a common market will in the long run offset the absence or the reduction of free trade, [the point is] no longer our tomatoes and our butter, but [the point is] the existence of the Netherlands, the upholding of a tolerable existence for the whole nation.'[305] In Welter's perception, after the loss of the East Indies in 1949, the Netherlands had definitely become too small to maintain its independent status. If so, he deemed it better to become a member of the EEC by its own will, on the basis of equality, than to become a satellite, both in the field of politics and economy, of a German or Anglo-Saxon bloc; a scenario Welter feared in case European integration would not materialise.[306]

This paradoxical argument in favour of voluntarily yielding national sovereignty in order to remain independent was based on the familiar *topos,* deeply rooted in the mindset of the Dutch political community. In order to maintain its position, Welter reasoned, the Netherlands had to rely on international partnerships, preferably based on treaty law. It was a powerful rhetorical instrument in the hands of

advocates of the treaty. To many the spectre of becoming a plaything in the hands of bigger powers was a motive for approving the treaty. The speeches of MPs from various political currents speak volumes in this regard. The farmer's son, Barend Biesheuvel (ARP), advocated approval of the treaty since the protectionist dangers threatening the Dutch agricultural sector 'are greater without the treaty than with the treaty.'[307] In an *ad consequentiam* argument, Pieter Oud (VVD) wondered loudly and cryptically 'What if the treaty does not get its approval in the Chamber. What would be the consequence then!'[308] Elias Verkerk (ARP) explained pragmatically:

> 'Preservation and development of the country's characteristics is in the last resort the only argument to smooth down the borders. We are concerned here with our contribution to the common cause, but by contributing *we* [italics added] are at stake. Only when I think of that, I am prepared to consider exchanging the not always very clear situation of 1957 for the moderate and meagre market regulations for the future.'[309]

The comment of senator Herman Hellema (ARP) strikingly summarised the various comments above: 'we think that the great objective is worth taking these risks.'[310] The nature of this 'great objective', however, was not further specified.

Karel van Rijckevorsel (KVP) and Marcus Bakker (CPN) were among the few who rejected the alleged dangers of not approving the EEC treaty as nonsense and a senseless basis for approval.[311] The latter was the only one to pragmatically remark that a Dutch rejection would nullify the treaty rather than isolate the Netherlands.[312] His call, however, did not find hearing. Again, this approach was too rigid a break with the widespread conviction that joining international partnerships would benefit the interests of the Netherlands.

What was structurally not talked about in the parliamentary debate on the EEC Treaty was what the EEC would eventually develop into. European integration as a concept was still not dwelled upon. In that regard, the great benefits that were expected of the EEC remained vague. In sketching the objective of economic integration in Europe, Foreign Minister Luns, who cannot be considered to have been a great idealist with regard to the process of European integration, did not get further than a 'new shaping of society among the European states.'[313] And although the Dutch MPs were well aware that the implementation of the EEC might affect the national preferences in economic policies, the political consequences of accepting the treaty

were not systematically considered. Neither the government, nor the parliamentary parties supporting it, elaborated on or questioned the exact meaning of the objective of 'an ever closer union among the peoples of Europe' as it was laid down in the preamble of the EEC Treaty. A political majority did not wonder if, how or to what extent their preferred strategy of instrumental internationalism – hitherto employed in more traditional forms of international cooperation – could be successfully applied to the process of supranationalisation among the Six. A process characterised by the new and quite revolutionary element of conferring national sovereignty to supranational organs.

The national constitution deployed as an ultimate remedy

Confronted with a large majority that was willing to approve the EEC Treaty on the basis of instrumental considerations and not prepared to go along with attempts of Van Rijckevorsel (KVP) and Bakker (CPN) of downplaying the effects of rejecting the treaty, the antagonists of the EEC needed to think of other ways to convince their colleague MPs.

The old issue of the undemocratic nature of international treaty making lent itself to this end. In the preliminary report it had already been expressed that a number of parliamentarians felt that the significance of the document at stake did not justify the hasty and opaque procedure in which the treaty had come about.[314] The interim report spoke of the disappointment with parliamentarians – not further specified – that the Dutch trade and industry sectors had not been consulted in the drafting process of the EEC Treaty before the Dutch government had put its signature.[315] Now that these sectors had clearly uttered their reserves with regard to the acceptance of a European initiative, it was argued that, from a democratic point of view, a serious consideration of these objections would have been necessary.[316] The remonstrance of the government that such a consultation would have delayed the process and as a consequence would have spoiled the 'favourable political momentum' for the signing of the treaty by Germany and France, was sceptically received.[317]

The issue reveals that the freedom the government claimed in international treaty making was still delicate. The significance and expected impact of the EEC Treaty was considered greater than the earlier results of the process of European unifications. Where the process would eventually lead to was unclear. As a result, various MPs from the ranks of the ARP, VVD, CPN and CHU, worried that some of the core principles of the political organisation of the country were in danger of being sacrificed in the process of European integration.

In their interpretation, discussing the EEC was not merely a case of international treaty making, but also a matter of great national constitutional relevance. Although the concept of conferring sovereignty on a higher European authority had been introduced already with the ECSC Treaty and the revision of the Dutch constitution of 1953 had made it explicitly possible, the debate on approval of the EEC Treaty shows that this concept was still contested. The political antagonists of the process of European integration tried to convince their fellow MPs that the transference of sovereignty should end where the constitutional competences of parliament – i.e. involvement in legislative procedures and the right to control the government – began. They, so it would turn out, found the constitutional reform of 1953 on their way.

The war-time Prime Minister, Pieter Gerbrandy (ARP), took the lead in the debate. The integrating dynamism that was expected to be boosted by the establishment of the EEC, was his focus of concern. Via the EEC Treaty, not only sovereign rights could be affected by international regulations, as had also been the case with traditional treaty law, but also important rights attached to sovereignty were delegated now: 'delegated in such a way that the delegating power itself does not know any more what will be done with that right, with that power.'[318] Gerbrandy wondered why the government had opted for direct delegation to the community level of sovereignty, instead of choosing for a traditional treaty in which cooperating states designed rules that could be changed and improved in the course of time? The government had agreed on a procedure that deprived parliament of its control of laws originating from the treaty, once parliamentary approval of the treaty itself had been given. In this design, Gerbrandy feared that the Netherlands and, in particular, the Dutch parliament would lose fundamental controlling and co-legislative competences without the ability to compensate for this loss of power on the European level.[319] In short, the Dutch political community would be stripped of its essential authority, which, according to the ARP-politician, signified a 'constitutional monstrosity.'[320]

Gerbrandy's worry essentially concerned the democratic competences of the Dutch parliament, i.e. the right to control the executive. He sharply and correctly observed that the EEC Treaty was a novelty in that it not only imposed mutual obligations on the signatory states (as had been the case in regular treaty law), but also *direct obligations* on citizens of the *national political community*. These 'provisions generally binding the citizens' [in Dutch: *de burgers algemeen verplichtende bepalingen*] were in fact provisions with a

legislative, substantive character, or as the VVD senator and former Professor in Civil Law Geert de Grooth put it: 'In fact, they are laws; they bind all citizens, even to a larger extent than the actual laws do, because they have force of law, according to the Constitution, to render inoperative laws that already exist.'[321] Here, De Grooth referred to the introduction of Article 65 in the Dutch Constitution of 1953 that stated that 'Legal statutory regulations within the Realm do not apply if these are not compatible with agreements made public either before or after the coming into being of the regulations […].' The fact that these substantive law provisions were designed by the government – the executive branch – and in the Netherlands only presented *à prendre ou à laisser* to parliament – the controlling branch that had a co-legislative function – was, from a democratic point of view objectionable. Since parliamentary control in the drafting phase of the treaty had not been provided for by the Dutch government, Gerbrandy (ARP) and De Grooth (VVD) held the signing of the EEC Treaty to be a flouting of fundamental democratic principles. Not surprisingly, the most explicit antagonists of the concept of European integration – the Communists – also joined in this protest.

At the root of this argument was an understanding of the concept of the nation state as the inviolable bearer of the sovereignty of the political community. The notion of parliamentary control being only effective within a sovereign state was a second supposition. This was clearly expressed in the following statement of Gerbrandy: 'The State is different from all other associations by its sovereignty, the quality to speak the last word with authority and power; in our western States – and I say this with emphasis – under control of parliaments.'[322] His *avant la lettre*-complaint about a developing democratic deficit between a European level of governance and the Member States was supported by Gerrit Vixseboxse (CHU), who stated that the EEC Treaty would severely harm 'the main bulwark of western democracy', namely the principle of democratic control.[323]

In an ultimate attempt to press home his claims, Gerbrandy brought up the subject of the relation between the EEC treaty and the Dutch constitution and the befitting approval procedure. He argued that it was not constitutionally justifiable that substantive law, resulting from a treaty, would not be structurally presented to parliament for approval. In his view it conflicted with the 'spirit of our Constitution!'[324] From a rhetorical point of view, a common dissociation lay at the root of his claim. Gerbrandy divided the constitution into two levels. The first was the level of the literal text, containing the constitutional provisions. The other level contained 'the

spirit' of the constitution, i.e. the way the articles should be read and/or were intended.

On the level of the literal text, Gebrandy seemed well aware that the constitutional change of 1953 had removed some elements of the legislative and controlling competences of the national parliament in favour of the European level of decision making. His flight towards the level of intention comes across as an ultimate attempt to convince parliament that the EEC Treaty broke with principles that defined the Dutch state and that it should therefore be rejected; a view that was, since the explicit (re)definition of these principles in 1953, difficult to uphold on the basis of the literal text of the Dutch constitution.

A weak element of Gerbrandy's argument was that the spirit of the constitution was hard to pin-point. Gerbrandy himself did not succeed in making it more tangible, since he did not attempt to give meaning to this concept. In spite of this vagueness, however, considerable time and effort was spent on refuting Gerbrandy's argument. The ARP-parliamentarian had broached a delicate issue. In the preparation leading up to the constitutional revision of 1953 and again in a process of technical fine-tuning of these changes in 1956,[325] consensus had been reached on the literal text of the constitutional chapter on foreign affairs and the presumed working of the articles in the future. An important step in reaching agreement on the interpretation of the new articles had been taken already in the debate on the approval of the EDC. Moreover, a parliamentary majority had already agreed to the observation of the government that there were no incompatibilities between the text of the EEC Treaty and the Dutch constitution.[326] Now, all of a sudden this consensus was challenged again and it was argued that the most fundamental law of the Netherlands allowed multiple interpretations. Again, a lively debate began on the question which competences the Dutch parliament had yielded when international treaty making was at stake and which competences it could still claim.

The prominent liberal statesman and constitutional expert Pieter Oud was the first to launch an attack against Gerbrandy. He started with a plea that the character of the EEC Treaty was essentially not very different from traditional treaty law. Oud emphasised that the latter had always encompassed the transference of sovereignty to a higher level of government. Seen from this perspective the EEC Treaty was nothing more than just another exponent of international cooperation; a form of internationalism that the Dutch had been acquainted with for ages. Secondly, implicitly referring to Article 67 of the constitution, Oud contested Gerbrandy's claim that transference of sovereignty to a European level of governance, without consulting parliament,

conflicted with the Dutch constitution: 'We have expressly entered into our Constitution that legislative, governing and judicial competences can be assigned to international organisations. […] I do not understand how it can be said now: "you act contrary to the Constitution."'[327]

Oud's first comment was not countered by Gerbrandy. Viewed with the benefit of historical distance, this seems an opportunity lost, since it would not have been difficult to take the edge off this argument. Indeed traditional treaty law and treaty making in the process of European integration were alike in that both forms asked for the transference of national competences. But the two forms differed on a crucial point. In traditional processes of international *cooperation* the higher level of governance was invested with power that its signatory powers transferred, but this power was not self-executing. Every bit of sovereignty transferred to the common level was to be authorised by the signatory parties. This mechanism, however, did not apply to the process of European *integration.* Here a common level of governance was created that was not only invested with sovereignty yielded by the signatory states, it was also given the competence to use this sovereignty to deepen existing competences and to develop new ones. The treaty provisions directly binding the Dutch citizens were one example, just like the interpretative competence of the ECJ as laid down in Article 177 and the implementation agreements that would follow from the treaty. A competing governing and legislative power was established with drastic consequences for the Dutch legislator, the citizens and the constitutional order as a whole. Seen from this perspective, Gerbrandy could have easily countered the first argument by stating that the transference of the sovereignty required, was extended much further than had been the case with traditional treaty making. However, he did not do so. An explanation might be that Gerbrandy himself did not (yet) clearly see the difference between the two forms of developing international partnerships. Although his interventions in the debate show that, at least intuitively, Gerbrandy knew that the EEC Treaty was different – in kind – compared to earlier international agreements, it might well be that because of the lack of experience with such a process of supranationalisation and the unpredictability of its effects, Gerbrandy was not able to pin point the conceptual difference sharply and to put Oud in his place.

Instead, Gerbrandy only rebutted – repeating his claim – that whereas the procedure applied by the government might not be verbatim a violation of the Dutch constitution, in his view it certainly was a breach of the *spirit* of the constitution.[328] Oud replied in a classic *post hoc ergo propter hoc* way of reasoning: 'It is not contrary to the

spirit of the Constitution at all. Before 1953 one could have wondered if it was contrary to the spirit of the Constitution. In the constitutional revision of 1953 we have explicitly laid down the power to do this. This may be considered inappropriate or wrong, that is all very well, but in my view there is not any inconsistency with the Constitution.'[329]

By stating this, Oud implicitly emphasised the central problem. Interpreting the constitution to one's own taste was not a problem as longs as this document floated up in the air, above everyday politics and without the consequences of everyday reality. But now that the Dutch parliament as a whole needed to decide on the EEC Treaty and both advocates and opponents legitimised their view via the constitution, a decisive explanation of the articles in question seemed again highly relevant. The 'real' spirit of the constitution, in other words, needed to be determined.

Parliamentary support for Oud's view far outweighed the backing of Gerbrandy's position. Supported by the complete PvdA party, Minister Luns put Gerbrandy in his proper place. The *fait accompli* line of Luns's reasoning, deployed to reject Gerbrandy's view, is fascinating. Approval of the Treaties of Rome, of which the EEC Treaty was an integral part, Luns stated, was no more than a consolidation and broadening of the choice to establish the European Coal and Steel Community. In a time in which Article 67 of the constitution had been accepted, in which the Coal and Steel-statute had been adopted and in which, although not put in force, the EDC-treaty had come about, Gerbrandy could not seriously insist that by signing and approving the EEC Treaty government broke new ground.[330] According to Luns, the Netherlands had already made a fundamental choice in favour of a 'special solidarity' with the other five Member States with the approval of the ECSC. Now the consequences of this choice, i.e. the development of the EEC, had to be accepted as well.[331] Taking the same line, the European-minded Van der Goes van Naters remarked cleverly that by approving the ECSC-Treaty and the constitutional changes of 1953, Gerbrandy and his party had assisted in creating the possibility to confer Dutch executive and parliamentary competences on higher organs.[332] 'We made that choice very intentionally and there is no question of any drama whatsoever.'[333] The ship had sailed five years earlier, was the message rendered to Gerbrandy and there was no return now.

Remarkably, this connection of succession between the approval of the ECSC and the signing of the government of the EEC Treaty was not challenged in parliament. A rejection of the argument could have been based on the observation that the scope and competence of the EEC reached much further than could ever have been foreseen at the

time the ECSC and the constitutional reform had been approved. Such a consideration was, however, not heard in the debate. Considering the broad parliamentary consensus on the intrinsic value of striving for European integration, one may wonder how much effect such an argument would have had, if it had been applied. In 1957, a political majority in the Netherlands was more than willing to see the successive European treaties and decisions to facilitate their implementation as logically and necessarily resulting from each other. This majority was consciously building on a unified Europe – regardless of how this process would eventually turn out – and was willing to sacrifice national sovereignty for this purpose.

Given the lack of backing Gerbrandy received,[334] the observation seems justified that, on a substantive level, consensus existed among the parliamentary majority that the treaty, its approval procedure and the autonomous effect it introduced, did not go against the text nor the spirit of the Dutch constitution. In fact, consensus was established here on its spirit and the general interpretation of the constitutional reform of 1953. A political majority showed itself again eager to accept an interpretation of the new constitutional arrangement that confirmed the open attitude of the Netherlands' political order towards the process of European integration. This implied that it was willing to explain the relevant articles of the Dutch constitution in such a way that the Netherlands and its political organisation – from a constitutional point of view – needed to clear the way for the European institutions to develop.

The Klompé amendment revisited

Notwithstanding the widespread consensus on the compatibility of the EEC Treaty with the Dutch Constitution, the Dutch parliament put a condition on its approval. Similar to the Klompé amendment that was introduced in relation to the EDC Treaty, Pieter Blaisse (KVP), wanted consultation of the parliament with regard to future legislation that would stem from the EEC Treaty. The amendment that he and his co-signatories of three of the four coalition parties (KVP, CHU, ARP) introduced, asked for the insertion of an extra article in the Bill of Approval that laid down that, if for the implementation of the EEC Treaty further agreements were concluded, these would have to be submitted for approval of the States-General.[335]

The amendment indicates that a concern about completely losing sight and control of what was decided on the European level, was still present in parliament. Moreover, the amendment illustrates that its submitters realised that they had embarked on an experimental

journey of which the future consequences could hardly be foreseen. The coming into existence of the EEC was welcomed in principle, just like the fact that the Treaty would be executed autonomously on the basis of implementation agreements. Yielding a *carte blanche* to Europe, however, was considered of such consequence that it should be prevented: '[…] on approval of the treaty a free hand will have been given for a period of 15 years, in order to conclude all kinds of implementation agreements among the Member-States. We very much appreciate […] that such agreements are made dependent on our approval.'[336] The amendment found assent in a wide parliamentary circle, also with those parliamentarians that had been critical of the treaty in the first place. The amendment, for instance, befitted the view of Karel van Rijckevorsel – one of the few KVP critics of the Treaties of Rome – who had proposed a transitional phase of a terminable engagement before an indissoluble European marriage was entered into.[337]

In the government, however, the Blaisse amendment – similar to its predecessor formulated by Klompé – was met with fierce protest. It regarded the condition as an objectionable obstacle to the freedom of the government to act on the international stage. Prime Minister Drees was concerned with the delays that extra parliamentary consultation would produce.[338] The argument that an amendment of this import undermined the negotiating position of the Netherlands was also dug up again.[339] In sum, the objection was that negotiating on the international stage (of which the European stage was seen as an integral part), in accordance with Dutch interests, presupposed a Dutch parliament that was not too strict in the understanding of its task as a co-legislative and controlling organ.

Marinus van der Goes van Naters (PvdA) supported the governmental objections, albeit with somewhat different considerations:

> 'The delaying aspect does not play such an important part for me, but what does for me and my friends is that this reversal of these communal agreements to the national Parliaments frustrates […] the development of European internal lawmaking. […] [It] is a kind of defeatism, which I consider incredible and dangerous for the further development to an international and supranational parliamentary control.'[340]

A staunch federalist, Van der Goes van Naters spoke of European internal lawmaking, ignoring that legislation made in the European

institutions would not stay on some sort of abstract European level, but would flow back to the Member States. For him this national level of control was redundant, since, within his conception of a European federation, full parliamentary control was to be established on the European level. Here, however, he was far ahead of the European political reality and of many of his fellow MPs. With the ratification of the EEC Treaty, a head start would be made with creating a European political community, but a parliamentary democracy as it had developed on the national level, that pre-supposed a European parliament with full legislative power, still seemed light-years away.

More towards the end of the debate in the Lower House, Van der Goes van Naters emphasised his stance again by presenting the amendment proposed by Blaisse as 'seen from an evolutionary perspective, putting the cart before the horse.'[341] The *fait accompli*-argument – an argument of succession in the terms of Perelman – was used again. His view was that the Dutch parliament had in fact – by its decision to support the motion Van der Goes van Naters/Serrarens in 1948 and by its approval of the ECSC-Treaty and the constitutional revision of 1953 – already given up its co-legislative power when it came to the development of European laws. Confronting it with its approval of previous political steps, Van der Goes van Naters tried to convince parliament that power was claimed here that had already been, voluntarily, yielded and should not be claimed back.

The arguments as put forward by Van der Goes van Naters did not elicit much response in parliament, let alone endorsement. Support for the amendment remained widespread. In defending it, Pieter Blaisse and co-signatories stood firm. The argument of delay was countered by the consideration that approval of the implementation agreements by tacit consent – as made possible by the introduction of article 61 in the Dutch constitution in 1953 – could solve this problem. Thus, delays could be prevented in most cases.[342] The reasoning in this rebuttal is exemplary for how the drafters of amendment approached the process of European integration. Instead of remonstrating that some delay in the approval procedure was to be preferred to the complete loss of parliamentary involvement in European legislative processes, – this line of thought would have been perfectly defendable from the perspective of national democracy – Blaisse c.s. chose to argue that such a delay could be prevented by following the speedier option of approval by tacit consent. It illustrates the disposition of a political majority that was very concerned about missing the European boat, while not worrying too much about a transparent and extensive approval procedure on the national level, in which all pros and cons could pass in review.

On 4 October the Blaisse-Amendment was passed with 85 to 45 votes. All votes against were, similar to the vote on the Klompé amendment, produced by the PvdA. Eventually then, 4 October 1957, an overwhelming majority of 115 to 12 of the representatives in the Lower House approved of the European Economic Community. Definite approval followed in December of that year when in the Upper House support was reconfirmed by a majority of 46 to 4 voting in favour of the treaty.[343] The coalition parties KVP en ARP produced one negative vote each in the Lower House. Not surprisingly Karel van Rijckevorsel and Pieter Gerbrandy were responsible. In the Upper House, two of the seven VVD senators, Geert de Grooth and Anthonie Molenaar, and in the Lower House the liberal MP Herman van Leeuwen,[344] voted against the treaty. The other negative votes in this House came from the CPN and the SGP.

Although a political majority seems to have been well aware that the EEC Treaty implied a decisive step in the process of European integration, it treated its approval as if it considered it no more than the confirmation of a path and a goal that had already been decided on, or as a logical result stemming from it. It was demonstrated in this chapter that, from the outset of the debate, a parliamentary majority perceived the EEC Treaty as being in line with the European integration policy that it had committed itself to since 1948.

Instrumental considerations were important in adopting the EEC Treaty. Similar to the initiatives of the ECSC and EDC, joining the EEC was judged necessary in order to safeguard the vital economic and political interests of the Netherlands. On a more fundamental level, the approval can be ascribed to the willingness of a parliamentary majority to strip the state of the Netherlands of certain nation-state prerogatives in order to guarantee the continued existence of the country. In other words, the transference of sovereignty to a European executive was deemed necessary in order to prevent worse. This willingness resulted from the deeply rooted conviction, that the Netherlands was too small to survive without the support of international partners. In this conviction the fundamental paradox guiding the Netherlands in its approach to the process of European integration in these years becomes clear: in order to preserve the Netherlands and the identity of the Dutch polity, the country needed to become part of a bigger entity, i.e. EEC. The firm belief that the Netherlands would not be able to survive on its own also explains the *fait accompli* lines of reasoning in the parliamentary debate. In fact, to the various speakers their basic assumption were self-evident and therefore not to be discussed or questioned.

The various lines of argument met in the sub-debate that arose on the interpretation of the recent amendment of the Dutch constitution. When Gerbrandy tried to restrict the purport of the articles introduced in 1953 by means of the artifice of dissociating the spirit of the constitution from its wording, he was virtually jeered off the platform by his colleague MPs. The reactions made clear that a great majority explicitly desired to interpret the constitutional reform as making possible in the process of international treaty making the transference of sovereignty and the renouncement of legislative and controlling competences. These possibilities were perceived to have been constitutionally settled in 1953; as if they were *faits accomplis,* not to be reconsidered. By doing this, a parliamentary majority confirmed its view that the identity of the Dutch polity should be characterised by openness towards the outside world. The isolating or national integrative effect that a national constitution traditionally had was dismissed in favour of this fundamental openness.

The discrepancy between the little criticism of parliament *vis-à-vis* the constitutionality of the EEC Treaty and the severe doubts of the Council of State and Pieter Gerbrandy in this matter is conspicuous. It shows that within the broader spectrum of the Dutch political community at the time of the adoption of the EEC Treaty there was no consensus on either the interpretation of the new constitutional articles nor on the open identity of the Dutch polity. The fact that both government and a political majority explicitly turned a deaf ear to these objections is indicative of the hierarchy in desires and values that a political majority preferred: proceeding with the process of European integration was the main concern, not be frustrated by rigid constitutional or democratic reasoning. It again confirms the priority of openness that this majority held.

One limit was, however, heeded. The adoption of the Blaisse-amendment indicates that a majority of the Dutch parliament did not feel comfortable with the role of Europe as an independent legislator, not controlled at all by the national parliaments. Parliamentary participation from the national level in the coming about of implementation agreements was deemed essential. Here, a last important observation must be made. The concern of parliament on the self-executing effect of the treaty indicates that it was aware that European integration would proceed beyond the level of the arrangements as had been laid down in the treaty text. Yet, remarkably little attention was paid in the debate to the future perspectives of European integration and its eventual consequences for the Dutch state. Thus, fundamental state competences were conferred on a

European level of governance without having a clear picture of how and to what purpose these competences would be applied and to what extent the Netherlands would still have a say in this. The history of European integration would show that this would have far-reaching consequences. The EEC became a *fait accompli* on which a powerful and competent Europe could be built. The floodgate had been flung wide already in 1953, but the approval of the EEC Treaty in 1957 was an open invitation for the tide to rise.

Chapter 3
Supranationalisation for Self-Preservation 1957—1979

'[...] [we] also liked to be seen as one of the champions of further integration, but an integration that had to serve Dutch interests.'

Bernard Bot[345]

3.1 Introduction

Way leads on to way.[346] A good illustration of these words of the American poet Robert Frost is found in the history of ratification of the Treaties of Rome and the developments that followed in its aftermath. With the implementation of the provisions of these Treaties in the national judicial domain of the Six, questions concerning interpretation started to rise among national legal experts.[347] In order to solve these questions uniformly and consistently throughout the EEC, Article 177 of the EEC Treaty offered the means by which such legal questions could be referred to the ECJ, in order to elicit a 'preliminary ruling.' After such a preliminary ruling had been given, the national courts could finish the case on the basis of the ECJ's interpretation. Throughout Europe, after that treaty entered into force on 1 January 1958, the introduction of this system aroused the attention of lawyers with a special interest in international law and the new system of European law that was still in its infancy.

Dutch lawyers, in particular those of the Dutch branch of the *Fédération Internationale pour le Droit Européen* (FIDE, the European Lawyers' Association), actively searched for ways to exploit the chances offered by Article 177.[348] On 21 May 1962 one of its members, the international lawyer of the Rotterdam bar, L.F.D. Ter Kuile, together

with Hans Stibbe, name giver of the famous Stibbe law firm, took a chance when defending the Dutch transport company *Van Gend & Loos* before the *Tariefcommissie*, the Dutch tax court. They argued that the government of the Netherlands infringed on Article 12 of the EEC-Treaty, by holding on to agreements between the Benelux countries, as laid down in the Brussels Protocol (25 July 1958), which implied a rise of customs tariffs.[349] The argument on which they built their case was that Article 12 of the EEC Treaty should be understood as to have direct effect, which would mean that the transport company Van Gend & Loos could directly rely on this article in its refusal to comply with the provisions of the Brussels Protocol.[350]

Although the Netherlands had recorded the principle of direct effect in its national constitution in 1956 and the primacy of treaty provisions over national law had been decided on in 1953 already, the Dutch tax authorities, confronted with this case, claimed there had not been unlawful tariff increases and that the transport company Van Gend en Loos could not rely on the direct effect of Article 12 of the EEC Treaty. The tax authorities were supported in their stance by the Dutch, Belgian and German governments, all involved in this cross-border legal dispute. They believed that the EEC Treaty should be interpreted as a regular treaty, falling within traditional international law. In their interpretation, any alleged infringement of the treaty by a Member State could be submitted to the judgment of the ECJ on the initiative of another Member State or of the Commission, but never by national citizens before a national court.[351] We like to be our own master in our own house, was the stance in Brussels, Bonn and The Hague.[352]

The history of European law took a decisive turn when the Dutch tax court, on the basis of Article 177 of the EEC Treaty, decided to refer this question on interpretation of Article 12 to the ECJ for a preliminary ruling. It was crucial that the question of direct effect 'was removed from national constitutional law and laid in the hand of the Court of Justice.'[353] A true legal revolution occurred when the ECJ, presided by the Dutch judge Andréas Donner, decided, firstly, that it was competent to rule in the matter and, secondly, that Article 12 had direct effect indeed.[354] As the basis for this conclusion, key elements from the text of the EEC Treaty were presented. The Court argued that:

> 'The objective of the EEC Treaty, which is to establish a Common Market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is *more than an agreement* [italics added] which merely creates mutual obligations between the contracting states. This view is confirmed by the

> preamble to the Treaty which refers not only to governments but to peoples.'

After having emphasised the special character of the treaty, following from the fact that in the preamble the 'peoples' of the Six were explicitly referred to, the Court then ultimately reached the conclusion:

> '[…] that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals.'

Thus, the ECJ equalled the creation of a common market in only a few sentences with establishing a 'new legal order.'[355] The decision on the actual legal dispute in the *Van Gend & Loos*-case was remitted to the national judge. Access to community law, the ECJ judges stated, would not imply that the ECJ would open its doors for national citizens, but that the national judge should observe compliance with Community Law. Henceforth every national judge was a European judge at the same time, and therefore obliged to apply the European rules in his own court or tribunal. Moreover, every individual taking part in economic life – from entrepreneur to consumer – could henceforth legally force a Member State to comply with these rules.[356]

The case demonstrates how constitutional elements, latently present in the EEC Treaty, were decisive in creating a European legal order. It has been argued that by its decision, the ECJ judges 'turned the [Rome] Treaties into a potential bill of rights for Member State citizens.'[357] Beyond doubt, the decision of the Court can be marked as a legal innovation in which the ECJ, by applying the method of a constitutional court, effectively introduced a form of constitutional dynamism in the process of European integration.[358] A mechanism for developing a body of European federal law was introduced that could be developed further – on condition that the Six accepted the legal authority of the ECJ – without political involvement of the Member States.[359]

Interestingly, despite the initial resistance of the Dutch authorities against this interpretation of the EEC Treaty, the judgment in the *Van Gend en Loos* case did not arouse much debate in the Netherlands. Once the ruling was there, it was accepted as 'a normal consequence of what we had decided. […] Our Constitution did not oppose that. […] There was a […] consensus with the government, scholars and the parliament

concerning the fact that we had to go along with this.'[360] One year later, in 1964, the ECJ referred to its Van Gend en Loos decision, when it ruled that the new legal order that the Six had called into being was supreme *vis-à-vis* their individual national legal orders.[361] With this decision the principle of supremacy of Community law was added to the principle of direct effect. A clear message was rendered to the Member States. By ratifying the Treaties of Rome the Six had joined in a new game with a powerful new player. The ECJ was willing to take a pioneer role in building a truly integrated Europe in which the playing field of the Member States was set by a European Commission, a European Parliament and a European Court of Justice.

Apart from the rapid legal maturing that the process of European integration underwent in the years after 1957, also in various policy fields the propelling effects of the Treaties of Rome soon became noticeable. The former Dutch Minister of Agriculture Sicco Mansholt, who, in 1958, became the first Dutch European Commissioner, made a flying start with the development of common principles for agricultural policy.[362] As a result, in 1963, the Common Agricultural Policy (CAP) was put into effect. In the field of trade policy, the dismantling of custom tariffs between the Six was started and a common external tariff was introduced. In 1968 a European customs union was established. In addition, trade agreements between the EEC and third countries were concluded and between 1964 and 1967 the EEC took part as a party in the Kennedy-round of the GATT negotiations. These occasions marked and confirmed the development and international recognition of the EEC as a new, autonomous entity on the world stage.

On a crucial point, however, the Six remained divided after the Treaties of Rome had entered into force. Although they had agreed in principle that 'an ever closer union 'was to come about, political integration remained a source of disagreement. As soon as ideas for integration affected policy fields traditionally representing the political autonomy of the nation-state – foreign policy, defence, social services, culture, etcetera – the Member States became wary of moving along. They feared a loss of influence in policy areas crucially intertwined with national interests.

A typical illustration of this tendency is found in the political behaviour of Charles de Gaulle, who was installed as the first President of the Fifth French Republic on 8 January 1959 and who became a key actor in the continuous fight about political integration of the Six in the 1960s. Driven by the ambition to re-establish the old hegemonic lustre of France, supranationalisation in general or building a European federation in particular, did not fit the ambitions of the French

general. Soon after his coming to power, it became clear that de Gaulle would work for a European Political 'Union' of a more traditional intergovernmentalist design, strongly resting on the political power of a Franco-German partnership. The French proposals for such a Union – the Fouchet-Plans I (1961) and II (1962), named after the French diplomat Christian Fouchet – testify of this intergovernmental preference just like the famous press conference of 15 May 1962 in which de Gaulle stated:

> '[…] la patrie est un élément humain, sentimental, alors que c'est sur des éléments d'action, d'autorité, de responsabilité qu'on peut construire l'Europe. Quels éléments? Eh bien, les Etats! […] J'ai déjà dit et je répète, qu'à l'heure qu'il est, il ne peut y avoir d'autre Europe possible que celle des Etats, en dehors naturellement des mythes, des fictions, des parades.'[363]

Little was to come of de Gaulle's ambitions however, without the approval of his five European partners who did not see their specific national interests served by the French proposals. Eventually, therefore, both Fouchet-Plans were rejected by the other EEC members, leading to stagnation of the talks on political integration. In 1965 this stagnation turned into outright crisis when Charles de Gaulle decided to cold-shoulder the EEC by having France no longer take part in negotiations between the Six.

The direct occasion for – what has been called – the French 'empty chair policy' was the request of the Commission of the EEC – in line with the agreements of the EEC Treaty – to gradually replace the system of decision making with unanimity in the Council of Ministers by the system of qualified majority voting. The French boycott of further negotiations was aimed at frustrating the transition to this supranational form of decision-making that ran counter to the intergovernmental plans of de Gaulle. The other members felt it as a blow to the fragile solidarity that had been developing at the European negotiation table since the signing of the ECSC Treaty. In the Netherlands, for instance, the action of de Gaulle was perceived as a serious violation of the mutual trust that the Six had been building. One of the former Foreign Ministers of the Netherlands, Bernard Bot, who worked in Brussels at the Permanent Representation of the Netherlands to the European Communities at the time of the empty chair crisis, recollected: 'We had committed ourselves tremendously [to the integration process]. When one Member State then […] [took] […] advantage of a particular situation it was felt as a serious breach.'[364]

From the point of view of the supranationally-inclined Dutch, the obstructionist attitude of de Gaulle, in which the French interests were explicitly put before the common interests of the Six, was a form of treason. In political and diplomatic circles in the Netherlands, it contributed to an atmosphere of increasing distrust of the continental, non-Atlantic French.[365]

The crisis lasted for seven months. Eventually, France returned to its seat in the Council of Ministers in January 1966. The determination of the Five not to allow the EEC to be broken up by de Gaulle had successfully forced the latter back to the negotiation table. Ultimately, being left in isolation, while the Five moved ahead in making plans for further integration, had been considered worse by France than continuing negotiations. Yet, de Gaulle succeeded in extorting a compromise in which France's wishes were, at least partly, met. On 30 January 1966 the *Luxembourg Compromise* – an 'agreement to disagree' – was signed by the Six. It provided that:

> 'Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the members of the Council while respecting their mutual interests and those of the Community.'[366]

It was recorded that the French delegation held this to mean that when very important interests were at stake, the discussion should be continued until a unanimous agreement had been reached. Although the Six could not reach concurrence on what should be done in case such an agreement could not be reached, they agreed 'that this divergence' should 'not prevent the Community's work being resumed in accordance with the normal procedure.'[367] In fact, the compromise signified a strong intergovernmentalist check in European decision-making. It was a sacrifice, made by the Five, to hold the EEC together. The Netherlands, a country that strongly believed in the national benefits of a supranational future, was one of them.

In the Sixties, in addition to the issue of political integration, the objective of expanding the EEC – as had explicitly been laid down in, respectively, Articles 237 and 205 of the EEC and Euratom Treaties – led to disagreements among the Six as well.[368] The first French veto in 1963 on the application of the United Kingdom for accession to the European Communities made this incontestably clear. In a notorious press conference of 14 January 1963, de Gaulle explicitly played the identity

card. He claimed that the Atlantic character of the United-Kingdom would not go well with the continental character of the Europe of the Six: 'England in effect is insular […] she has in all her doings very marked and very original habits and traditions.'[369] This comment is significant, since it was one of the first times that differences in character between the countries of Europe were explicitly framed as a limitation to the process of European integration.

De Gaulle, however, failed to flesh out his identity concern. Questions on how the UK did exactly differ from the Six, or, viewed from an opposite angle, what the continental Six really had in common in terms of habits and traditions were not asked nor answered. Therefore, the remark could hardly conceal his real concern: the fear of the loss of French influence in case the UK would join the European Communities as a member. In 1967 de Gaulle vetoed against British entry for a second time.

Similar to de Gaulle's intergovernmentalist conception of Europe, the continental picture that the French leader sketched, did not appeal to the Netherlands either. On the contrary, being ranged in a continental tradition by France, was no less than a spectre for the Dutch, who indeed felt more connected with the Atlantic UK. From the outset of the European integration process, consensus had existed with both the Dutch political and intellectual elite that the Netherlands should strive for openness in the process of European integration, characterised by the possibility of other countries to join in. Especially accession of the UK had consistently been seen as crucial in order to create an Atlantic counterweight against dreaded German and French power play. The attitude of Charles de Gaulle in this matter was diametrically opposed to the Dutch wishes and ideals and therefore raised anxiety in the Netherlands about the future of Europe and the position of the Netherlands in it.

This anxiety was an important motivation behind the Dutch attitude and actions in the process of European integration between 1957 and 1979. Broadly speaking, in these years, the approach of the Netherlands can be characterised by the pursuit of progressive European integration, aimed at safeguarding the interests of the Netherlands. In order to reach this objective, supranationalisation, or the 'deepening' of the integration process, was sought after. By initiating a diplomatic proposal for a merger of the executives organs of the various European institutions (the Merger Treaty of 1965) and working towards direct elections of the European Parliament (EP, 1979) the Netherlands tried to effectuate a supranational Europe in which the stronger political powers among the Six – France in the first place – could be curbed.

Secondly, the accession of new members to the EEC – the 'widening' of the integration process – was insisted on. The eventual accession of the United Kingdom to the European Communities in 1973 was celebrated in the Dutch parliament as a great success. It was seen by a political majority as to positively contribute to the course that the Netherlands had plotted since 1948: an open process of European integration in which the country's economic (trade) and political interests (a new balance of powers) would be secured.

The conviction that supranational European integration would economically and politically benefit the Netherlands, was again at the root of the Dutch strivings. This instrumental internationalist approach, which had characterised Dutch foreign policy since early modern history can be recognised in the Dutch strategy of moving towards a unified Europe: the Netherlands tried to use the European partnership as a means to reach its international political and economic objectives. Compared to the long tested and familiar strategy of instrumental internationalism, there was one fundamental difference with the new version of 'instrumental supranationalism', which was not yet recognised, let alone problematised by the Dutch political majority.[370] As has been emphasised before, *inter*nationalisation through treaty law had been a relative unequivocal game in which bi- or multilateral agreements rather straightforwardly reflected what was mutually yielded and received, whereas the result of the process of *supra*nationalisation was much more elusive and unclear.

The self-propelling dynamics of this process – of which the *Van Gend en Loos* and, not much later, the *Costa v ENEL* judgments would turn out to be only a foretaste – made it hard for the individual Member States to control either the course of the process or its outcome. Any control on meticulously steering it into a politically desired direction, would therefore turn out to be illusory. It is contended here that even more potentially problematic than the oversimplified expectations with which the process of European integration was approached by the Netherlands, was the blind spot that followed from it. A blind spot which deprived a great part of the political elite of its view on the importance of a broad democratic legitimatisation of this process of building a European political community.

3.2 An Instrumental Merger? (1966)

Although the Rome Treaties had provided for one Court and one Parliamentary *Assemblée* for the ECSC, EEC and Euratom, the three communities had still kept their separate executive organs in the

form of three executive Commissions and Councils of Ministers. Not surprisingly, in everyday practice this fragmented organisation came with the drawback of inconsistent and inefficient decision-making. Soon after the entering into force of the treaties, Dutch parliamentarians had already signalled this, at first sight, rather superficial organisational flaw. In 1959, they were among the first to suggest a merger of the three executives in order to improve the functioning of the European Communities.[371]

In May and June 1960, the Presidents of the three European Commissions – the influential Dutch diplomat Dirk Spierenburg was one of them – also called for such a merger. In a plenary parliamentary debate in the Netherlands in July 1960 the desirability of such a merger was again emphasised by representatives of the various mainstream pro-European parties. It stands out that the merger was not only viewed as to improve the functioning of the ECSC, EEC and Euratom, but that it was also considered to contribute to the supranationalisation of the integration process as a whole and was therefore advisable. In other words, these parliamentarians argued in favour of the merger not solely or even primarily for organisational reasons, but for the deeper structural effects they believed it would have. As they saw it, the strengthening of the European executive power would result in a call for a stronger legislative and controlling power, i.e. a stronger European Parliament (EP). In their view, it was needed to diminish influence of the individual governments and thus to underline the process of supranationalisation.[372]

In reaction to the calls for a merger on the level of the European executives and the accompanying encouraging reactions in the parliament of the Netherlands, the De Quay government (1959-1963) – a coalition of the KVP, VVD, ARP and CHU, led by Jan de Quay (KVP) – set to work to draft a proposal for the merger of the executive organs of the ECSC, the EEC and Euratom. A first proposal for such a merger was presented to the Councils of Ministers of the three European Communities on 27 June 1961. Disagreement among the Six on the Fouchet-plans, however, slackened the decision making process on this 'Merger Treaty'. After this period of stagnation the discussion on the merger based on the Dutch proposal was resumed in 1963. Eventually, after having reached agreement on the last details in March 1965, the Treaty establishing a Single Council and a Single Commission of the European Communities (hereafter Merger Treaty) was signed by the Six on 8 April 1965. The first amendment to the Treaties of Rome was a fact.

The Merger Treaty established a single Council with a rotating presidency every six months.[373] The parameters of this first reform of

the EEC Treaty have been interpreted as to have been very much set by de Gaulle's France: this country decided the speed and the content of the reform and made sure to limit the effects.[374] The number of Commission members, for instance, was set at nine, instead of the fourteen wanted by the smaller Member States.[375] Moreover, efforts of the Netherlands to use the occasion in order to open the question on the scope of tasks of the Parliamentary Assembly were blocked by France as being too political. And although QMV voting was extended to certain areas, decision making by unanimity remained the standard; a clear signal that the instrumentalist supranational desires of the Netherlands were still far from being realised.[376]

Position of the government

In November 1965, in the midst of the empty chair crisis, the newly inaugurated cabinet led by Jo Cals (KVP) (1965-1966), consisting of members of the KVP, ARP and PvdA, presented the Merger Treaty to the Dutch parliament.[377] It was eager to get the treaty approved there, all the more so since the agreement was the result of a Dutch initiative. Since the government did not consider the approval of the treaty to touch on national constitutional provisions in any special way – the parliamentary discussions of the 1950s had clearly rendered the message that such a special connection was not to be demonstrated easily anyway – it was presented to parliament for approval in accordance with the regular procedure of Article 60, subsection 2 of the Dutch Constitution. Needless to say, this procedure benefitted the Dutch government in terms of the (simple) majority needed for approval compared to the Article 63 procedure that should formally be run in case deviation from the Constitution was established.

In the explanatory memorandum, consistent with the view of parliament since 1959, the government did not present the merger as a goal in itself, but as a means to reach supranational European decision making. This was considered to benefit the interests Community, and thus also those of the Netherlands. Focusing on the role of the Commission, the government stated: 'By centralising the powers […] into one Council and by a more efficient organisation of the executive services under one and the same management, the actual influence of the Commission in the institutional establishment may increase especially *vis-à-vis* the Council of Ministers.'[378] 'One supranational authority' would emerge that 'will look after the interest of the Communities as a whole.'[379] With these words, the Cals government showed its supranational perception of Europe, while at the same time clearly positioning itself against de Gaulle's intergovernmentalist

conception. The comment, furthermore, reveals the trust that the government had in a Commission that would let the common interests of the Six – in whatever way these may be defined – prevail over the diverging wishes of the individual Member States. Building on this observation, the governmental perception of the Commission and its role reveals the presupposition that establishing strong supranational European institutions would benefit the position of the Netherlands. Viewed against the background of the French insistence on two Commissioners for the larger three Member States and only one Commissioner for each Benelux country, however, the Dutch trust in a 'neutral' Commission comes across as premature or maybe even naive.

Continuing its plea in favour of the merger, the government emphasised the conditional relation between the merger and the strengthening of the European Parliament. It presented the merger as a necessary condition for giving the EP more power. This was, in its turn, perceived by the Dutch government as an essential pillar for the process of European unification.[380] The merger was thus presented as to set off a chain reaction in the desired direction of supranationalisation.

The goals of the merger as presented by the government closely matched the considerations of the political advocates of such a merger as expressed already since 1959. Ever since, the stance of the KVP, ARP and PvdA on European integration in general, and the merger in particular, had not fundamentally changed.[381] Within these parties the ideal of (federal) European unification was still propagated and supranationalisation of the European institutions and decision making procedures were seen as a necessary condition.[382] Since these three coalition parties held a majority of more than seventy per cent in parliament, the government could anticipate a smooth approval of the merger.

And yet, since the approval of the Treaties of Rome in 1957, the parliamentary opposition against progressive European integration had grown. The *Gerefomeerd Politiek Verbond* (GPV, Reformed Political Alliance), established in 1963, just like the SGP opposed the development of a European 'mammoth state' because it cherished the independence of the Dutch state as a gift of God.[383] Also new in the group of political parties that were critical of the process of European integration was the *Pacifistisch Socialistische Partij* (PSP, Pacifist Socialist Party), founded in 1957. With regard to European integration it was initially neither a fervent advocate nor a fierce antagonist; the PSP simply had other priorities. As far as the unification of Europe was concerned, it held the view that capitalist interest groups should not be given the chance to gain economic and political power via the

European institutions.[384] Europe, in other words should be social or Europe should not be at all. The entry of the PSP into the Dutch parliament signified a strengthening of the anti-capitalist protest against European integration as had been expressed by the CPN from the start of the European integration process. Still, however, the parliamentary opposition to the process of European integration was too small to break the consensus among its principle protagonists.

Outside the political domain, the stagnation – in terms of reaching new landmarks[385] – that the process of European political integration was experiencing under influence of the politics of de Gaulle, was reflected in what was written on it. His first veto against British accession in 1963 and the icy diplomatic relations that followed, had caused doubts among Dutch public intellectuals about where the process of European integration would lead to and whether supranationalisation was really to be expected. Although the vanguard of the European federalists of the 1950s remained dominant in publishing on European integration, frustration started to filter through in the public intellectual debate; a more critical note began to develop in the Netherlands that raised difficult questions regarding the feasibility and borders of European unity.[386] For the continuation of the story it is important to keep in mind that the parliamentary debate on the Merger Treaty took place against the background of these growing doubts on, mainly, the feasibility of far-reaching supranationalisation.

Debate in parliament

When in the early summer and autumn of 1966 the Merger Treaty was up for debate in the Dutch parliament – in the Lower and Upper Houses, respectively just before and in the midst of the empty chair crisis – it was welcomed by many. In the plenary debate, only the PSP explicitly expressed itself against the treaty because it feared that the merger would enhance the character of the EEC as an economic, anti-socialist power.[387] Throughout the debate the focus on the supranationalising effect of the merger was strikingly present. Discontentment with a political majority concerning the still largely intergovernmentalist functioning of the EEC fanned the hope with this majority that the merger would force a breakthrough towards a more supranational set up. Supranationalisation – it has been demonstrated in the preceding – was believed to benefit the position of the Netherlands as compared to the intergovernmentalist model that Charles de Gaulle publicly propagated.

Remarkably, however, the fundamental consensus with the majority that the merger should be approved was accompanied by

uncertainty and scepticism on its actual effects. Expressions such as 'for heaven's sake our fiat to this deal, although we do ask ourselves if we will gain much from it' and 'it is a poor whole, but it certainly turns out to be the least unreasonable thing achievable' indicate that the motive for approving the treaty was rooted in concerns of what would happen if it was not approved rather than sheer enthusiasm of the agreement itself.[388] Essentially, these utterances reveal that the conditional logic between the merger and supranationalisation that the government had referred to was not taken for granted. The obstructionist attitude of France in the process of European integration made parliamentarians wonder whether the merger was a sufficient guarantee for the development of European integration into a supranationalist direction. What if, after ratification of the Merger Treaty, in the process of appointing a new European Commission, de Gaulle would insist on replacing the President of the European Commission Walter Hallstein, who had manned the post of president of the EEC Commission since 1957 and who was held in high esteem by the Dutch parliamentary majority for his 'pro-European' stance? Or what if France would replace its Commissioners Robert Marjolin and Henri Rochereau by more nationalistically inclined specimens at the rotation round of the European Commission, scheduled for 1967? The merger of executives could be effected, but if a supranationalist future was not to be extorted, its practical effects could not but disappoint.[389]

By raising these questions, parliament opened its eyes for the tacit assumption with which it had until then approached the concept of the merger. The questions show that it had become aware that the agreement itself was after all not a guarantee of a supranational future that the Netherlands strived after for instrumental reasons, since it did not imply any formal obligation for the Six to make come true Dutch preferences, such as declaring supranationalisation the main organisational principle of the Communities, let alone an obligation to strengthen the EP. Since the five European partners had their own interests to reckon with, just like the Commission and the EP, it was likely that these partners would pursue their own, diverging goals that would cause a dynamics difficult to be controlled by the Netherlands. The Dutch parliament was wary of gambling on a premise – i.e. the supranationalising effect of the merger – that would only prove its worth over time.

From defence towards consensus

Confronted with these concerns, the Dutch government chose a rhetorical line of defence that anticipated the majority consensus that

supranationalisation was essential and simultaneously confirmed the gut feeling existing with many parliamentary advocates of European integration that without the merger the chances for the EEC to develop into a supranational entity were indeed smaller than with this treaty on it. In the words of the Foreign Minister:

> 'I fear that when no progress is made and the merger of the executives does not come about, then the moment comes that a government at a certain time will have to declare here in this Chamber, that the European Commission has turned into a commission of executors of the will of the individual governments and that all emphasis, counter to the intentions and the treaty itself, will be laid with the Council of Ministers, which, according to the Government and undoubtedly also according to the Chamber, will be very unwelcome'[390]

It was a smart intervention befitting the conviction of the parties in favour of European integration that if nothing was done, the Netherlands would certainly come off badly in a Europe run by the most powerful governments of the Six, whereas the merger offered a window of opportunity towards a better future in which the political and economic power would be more proportionately divided.

Notwithstanding the attractiveness of this thought for large parts of the parliament, it did not immediately give in. In order to emphasise their concerns and to raise the awareness with the government of its responsibility for a supranational future to follow after the merger, a group of MPs of the coalition parties KVP, ARP, and PvdA introduced a motion in which they called on the government to stand up for the objective of supranationalisation before ratifying the treaty:

> 'The Lower House […] expresses its confidence that the Government will not lodge the ratification documents before having got the greatest assurance possible, that the commission in its new composition offers sufficient guarantees for a well-balanced communal [i.e. supranational] development of the European Communities.'[391]

Making the best of the bargain, the Cals government, through Minister Luns, expressed its willingness to accept the motion which – obviously – did not imply any concrete actions that the government could be judged on in the long run.[392] It was telling then for the deep belief that the Dutch political majority cherished with regard to the absolute necessity of progressive European integration that the merger

of the three executives was approved by a large majority, even despite doubts on its effects. On 21 June 1966, after only one round of debate, the Merger Treaty was adopted in the Lower House without a voting by call. Approval in the Senate followed on 25 October.

Decisive for its approval was the consideration that without this new step in European integration the Gaullist focus on French interests was certainly not to be broken, whereas the merger might give more power to the European institutions and thus shift the balance to the protection of the community interests; a development of which the Netherlands was considered to profit. By choosing the flight forwards, or in other words, by tightening the European bonds, the Dutch political elite hoped to outsmart the French domination. In doing this, it knowingly gambled in its support of progressive European integration on a, for the Netherlands, future beneficial course of the process. This gamble made a pro-active attitude of the Netherlands in the continuation of the process of European integration more important than ever.

3.3 High Expectations of the UK Accession (1972)

The vetoes of de Gaulle put on two British requests for accession to the European Communities caused spirits to fall to an absolute low in the Netherlands. The former Director-General of European Cooperation (1978-1986) of the Dutch Ministry of Foreign Affairs Herman Posthumus Meyjes, who worked as a civil servant at the time of the French vetoes, keeps lively memories of the unsuccessful negotiations on English accession: 'I have seen grown men cry. It was that dramatic.'[393] Another former civil servant of the Foreign Ministry, the later Professor of International Organisations (1963-1976) and Judge in the ECJ (1990-2000), Jos Kapteyn, similarly recollects: 'The [first] veto of De Gaulle had caused a sort of trauma.'[394] Never had the realisation of expansion of the European Communities towards the Atlantic – a thing that had been wished by the Dutch political community since the start of the integration process – seemed so far away. But the late 1960s brought reversal.

In January 1969, the resignation of Charles de Gaulle brought Georges Pompidou to power.[395] Although Pompidou could not be accused of keeping a strong integrationist, supranationalist, let alone federalist attitude towards the process of European integration, it was clear that a new political and diplomatic latitude arose, now that de Gaulle had left the *Élysée*.[396] While he agreed with de Gaulle that the reality of the nation states was not to be denied, for Pompidou Europe

was a necessity. Therefore, new goals could be set and debates on old goals could be re-opened. For the Netherlands it meant a new chance of fulfilment of its long cherished wish of British accession.

In the second half of 1969, when the presidency of the Council of the European Communities was held by the Netherlands, the issue was put high on the agenda. The organisation of a European Summit in The Hague on 1 and 2 December 1969 was seized as an opportunity to discuss the European priorities of the Netherlands: the renunciation of the Luxembourg Compromise making possible the extension of supranational decision making,[397] the widening of the competences of the European parliament and direct elections of this parliament (both also for reasons of supranationalisation) and the accession of four candidate members who had applied for membership in the early 1960s: Norway, Denmark, Ireland and – of the greatest concern to the Netherlands – the United Kingdom.[398]

In the Dutch parliament, the political majority in favour of far-reaching European integration held high expectations of the summit. The occasion was considered to be a chance for breaking with the ten years of Europe-disappointment. Hans van Mierlo – the political leader of *Democraten'66* (Democrats '66 or, briefly, D'66), a new party in parliament [399] – with a great sense of pathos declaimed that 'the moment of truth' had been reached with regard to the question whether the full implementation of the Treaties of Rome would be possible.[400] Revealing his concerns on the gap between the supranational ideal and the still largely intergovernmentalist political reality between the Six from, Van Mierlo spoke of a 'test-case': 'are [we] able to determine our identity, the identity of the Six. Who is going to negotiate with whom. Will they be the Six, as they should be under the [EEC] Treaty, or is it the Six as they are?'[401] When it was eventually agreed at the summit that new proposals for political unification would be formulated and that negotiations on the accession of the candidate members would be opened, the pro-European parties in the Dutch parliament showed themselves satisfied with the result.[402]

With regard to the issue of accession, the Six soon succeeded in making a step. The preparations for negotiating the accession of the new Member States started soon after the turn of the year. It marked the beginning of a new phase in the process of European integration. No longer was the focus solely on the bringing about of an internal market, but attention shifted to community building in a broader sense. The formulation of common criteria for accession by the Six – new members should, among other things, uphold a democratic order and respect human rights – presupposed agreement among the EEC members, on a

fundamental level, on what connected them; not necessarily a sinecure after a decade of discord. On 30 June 1970 the actual negotiations with the four candidates commenced. After one year, in the summer of 1971, agreement between the United Kingdom and the Six was reached. Again six months later, on 22 January 1972, Norway, Denmark, Ireland and the United Kingdom signed the Final Act concerning the instruments of accession.

The agreement started from the concepts laid down in the preamble and the provisions of the Treaties of Rome.[403] The application of the candidate members, the preamble of the accession treaty reveals, had been considered by the Six from their determination 'to construct an ever closer union among the peoples of Europe' and the identical articles 237 of the EEC Treaty and 205 of the Euratom Treaty that stated that 'any European state may apply to become a member of the Community.' In these provisions, the term 'European' was not further, geographically or otherwise, specified or delimited, implying that a broad – or perhaps better to say: conceptually vague – understanding of Europe was upheld by the Member States. The implications of increasing diversity within the European Communities for future chances of further integration were not considered. Since the four candidate members had applied for membership and the governing institutions of the European Communities had 'declared [themselves] in favour of accession', on the level of European formalities nothing was in the way of the entry of the new Member States.[404] The next step was the national parliaments to give their approval.

Position of the government

In June 1972, the Biesheuvel I government (1971-1972) presented to parliament the draft bill for approving the accession of the four new members. Again the procedure of Article 60, subsection 2 of the Dutch constitution was proposed.[405] This indicates that the government did not see, or intended to see, any special relation between the accession treaty and the Dutch constitution. This perspective, again, benefitted the government in terms of a less stringent approval procedure. It would not be challenged in parliament, which is especially noteworthy considering the 'enabling provision' recorded in the Dutch bill of approval that authorised the government to conclude additional agreements with the acceding countries without the need to consult parliament.[406]

The Biesheuvel I cabinet was a variegated coalition. Led by Barend Biesheuvel (ARP), it was composed of representatives of the KVP, VVD, ARP, CHU and, newcomer in the political landscape, DS'70.

This Democratic-Socialist party, founded in 1970, had split of off the PvdA.[407] Whereas the latter, under influence of a process of party renewal, had nuanced its stance on European integration towards the position of the PSP – pro-European, but only to the extent that the process had to lead to a socialist and democratic Europe[408] – DS'70 had more in general a pro-European integration attitude. When in August 1972 the first Biesheuvel cabinet fell, the interim-cabinet Biesheuvel II took office. This minority government, consisting of the same parties as Biesheuvel I minus DS'70, stayed on until March 1973; two months after the United Kingdom had formally become a member of the European Communities.

As far as the composition of the government was concerned, a relevant change had occurred with the replacement in 1971 of the diplomatic heavyweight Joseph Luns (KVP) by Norbert Schmelzer (KVP). Already early in his life, Schmelzer had become enthusiastic about the ideal of a European federation.[409] This ambitious politician was more in favour of European integration than the Atlantically inclined diplomat Luns and took delight in letting his officials in the Dutch department of Foreign Affairs work on long term prospects, European integration being one of them.[410] In his task of coordinating and implementing Dutch foreign policy he was supported by his State Secretary for European Affairs, Tjerk Westerterp (KVP), who had been active earlier as a journalist and a European official. Both Schmelzer and Westerterp remained in office during the two successive Biesheuvel governments.

In the explanatory memorandum defending the accession of the four new members, the Dutch government presented four arguments. It successively presented an argument of consistency, an argument emphasising the necessity of the accession in order to reach the objective of supranational unity, an argument based on identity considerations and, lastly, a purely economic instrumentalist argument. Starting off with the argument of consistency, it set forth its view on the connection between the longer existing ambitions of the Dutch political community to expand the European Communities with new members and the decision on accession that was under discussion. 'By signing the Treaty on the accession of Denmark, Ireland, Norway and the United Kingdom', the government stated, 'a very important objective of Dutch foreign policy has been achieved.'[411] It was an argument of policy consistency, rendering the message to parliament that the decision to be taken was no more than the realisation of an objective that had been set earlier.

Secondly, the accession was claimed to be a necessary condition on the way to European integration, which was defined here by the government as: 'abolishing outdated dividing lines and the starting of a process of economic and, eventually, also political unification.'[412] The use of the word 'outdated' shows that the government aimed to convince parliament that a new time had come that left no room for the old concept of national sovereignty. Implicitly, the government presented approval of the accession as the only right thing to do.

The government did not elaborate in detail on what unification should look like and what it would imply for the political independence of the Netherlands. Yet, at certain instances in the presentation of the treaty to parliament, the government took an advance on its hopes and expectations for the future course of the integration process. Similar to the Merger Treaty, the accession of the new Member States was presented by the Dutch cabinet as a necessary means to bring supranationalisation closer. In the explanatory memorandum it stated that: 'In an enlarged community, more than ever, there will certainly be a strong need of a strong European Commission that can act as the driving force of the integration process and which can contribute to the prevalence of the interest of the community as a whole over the interests of the Member States, *also over those of the big ones*. [italics added]'[413]

Again a central role in the process of supranationalisation was assigned to the European Commission that was deemed an important instrument in bringing supranationalisation closer by counterbalancing the wills and interests of the big states. Implicitly, again, the Netherlands was portrayed as a small state, the interests of which were very often not in line with those of the bigger Member States and therefore needed the protection of the Community. The main premise of the government seems to have been that the structure of strong European Communities, ruled by strong community institutions '[makes] it possible […] that decisions concerning us are not taken without us, but that we can influence from within the course of events in Europe.'[414] In the logic of the Dutch government, expanding the European Communities was a necessary condition to bring about the desirable balanced supranational structure. The chances of these structures to really develop, possible disadvantages and dangers for a small state in a supranational community, or additional conditions for such a Community to function in favour of the Netherlands, were not entered into.

Apart from the arguments of policy consistency and necessity in favour of supranationalisation a third reason for accession of the

candidate members was given. It was based on an identity claim in which a form of, what might be called, mental kinship between the Netherlands and the acceding countries, was said to exist. In the explanatory memorandum, the government stated that 'The expectation [seems] justified that involving in the work of the Communities, democratic, outward looking countries, mentally related [in Dutch: *mentaal verwant*] to the Netherlands, will positively influence the substance of the policies of the Community and discourage the coming into existence of an inward looking European nationalism.'[415] Although it was not explained by the Dutch administration, the reference to an 'inward looking European nationalism' probably referred to the French desire for fencing the Communities in and governing them through the method of intergovernmentalism. For many in parliament – representatives of a country since the seventeenth century striving for, what we could call, 'outward looking internationalism', especially in foreign affairs – the French conception of an integrated Europe was no less than a spectre. A '*geschlossener Handelsstaat'* as Johann Fichte had foreseen in the early 19th century, was the metaphor used by MP Piet Jongeling (GPV) to reject the French ideal of Europe; a pregnant statement considering Fichte's link with the ideology of German romantic nationalism.[416] In some of the more traditional official circles in the Netherlands, during the hey-days of Charles de Gaulle, the term 'club of rotten pears' had come into use to indicate an EEC that was dominated by the continental and protectionist vision of the French.[417] By means of expanding the Community with states and peoples, considered to be attracted by 'Dutch' viewpoints such as free trade and non-continentalism, the much detested French feathers could finally be cast off. Or at least, so it was hoped.

The government's fourth, and final, argument concerned the economic advantages of the accession. It claimed that in a Europe of Ten, the Netherlands would, geographically, have a more, central position, yielding the country the position of 'junction of connections' which would benefit the Dutch economy.[418] Fully in line with the long-existing Atlantic preferences of the Netherlands, the accession of England was given special consideration in comparison to the accession of the other Member States. Ever since the establishment of the European Free Trade Association (EFTA, 1960) of which the United Kingdom had been a founding member, trading with England had been difficult.[419] Setting its own trading tariffs, this association *de facto* competed with the EEC on the world market. With the accession of England to the EEC, the Dutch government argued, the barriers that

had severely hampered trade relations between the Netherlands and this country since 1960, would be lifted. England would join the tariff system of the European market, which directly benefited the export of Dutch agricultural products.[420] Adding to this that from times immemorial Dutch trade had maintained contacts with England and that a language barrier was for that reason considered practically absent, the government stated cheerfully: 'Compared to its EEC competitors [so much for thinking in terms of 'common interests'!] a certain lead for Dutch business on the English market may be expected then.'[421] Thus, an instrumental argument of economic benefit was added to the necessity argument of supranationalisation, de-Frenchification or even 'Dutchification' of the EEC and the argument of policy consistency. All this shows that instrumental reasoning from a national perspective was crucial in the approach of the Dutch government to the process of European integration. It chose for deepening and expanding the European Communities because this would contribute to the international power of the Netherlands. Merging for self-preservation; a paradoxical concept that functioned only *because* and *as long as* the Communities were perceived as an extension of the Netherlands and its interests.

The government was eager to admit that not all problems would immediately be solved with the accession of the four candidates. Or rather, new problems would arise. In contrast with the fundamental assumption of the political majority that a bigger and stronger Europe would mean more international influence for the Netherlands, it was at some point even considered that the relative political importance of the Netherlands might also decrease considerably within an expanded EEC of ten Member States. The Dutch interests and those of the new Member States, for instance, would presumably not always coincide; a thing that might complicate the decision making process within the European Community. Acknowledging these risks and difficulties, the government nevertheless called on parliament to vote in favour of the accession, arguing that 'the general and long-term advantages so much surpass in importance the risks mentioned.'[422] It reasoned that these problems would be solved over time, since a strong European Commission would eventually result from the expansion. Then, it was assumed, a supranational European Community would develop in which interstate conflicts of interests would no longer rule; for, indeed, in a strong Community, the Community interest – which was generally believed to naturally coincide with the interests of the Netherlands – would prevail. Again, the consideration shows the preoccupation of

the Dutch political mainstream with the positive effects of European integration for the Dutch nation-state.

Considering the long-standing Dutch consensus on the desirability of expansion of the EEC and a large political majority still advocating progressive European integration, it was likely that the government would find support for the accession treaty in parliament. Support also came from non-political circles. Various public intellectuals in the Netherlands, such as Pieter Geyl, had since the mid-1950s also argued in favour of accession of more European countries, the United Kingdom in particular: 'If we want to find unity in Europe in freedom, then it is absurd to leave out England that three times – the last time most gloriously – threw itself into the breach for the freedom of Europe.'[423] As usual, criticism could be expected of the 'by nature' Europe-critical parties of the CPN, PSP, GPV and SGP.[424] The general objections of the first two, ultra left parties had remained unaltered: the integration process benefitted large industrial concerns more than the man in the street as the process was too much anti-Communist and pro-American inspired and the EEC tended towards the formation of a capitalist bloc rather than being a truly, socially oriented, internationalist initiative. The conservative Protestant parties were still clear in that they kept seeing the sovereign nation-state as the ordering element in international politics and were, consequently, not supportive of anything that would strengthen and deepen the process of European integration. The Biesheuvel I cabinet could therefore not reckon with their support for the accession.

Relatively new in the political opposition was the *Politieke Partij Radicalen* (Political Radical Party, PPR), founded in 1968 as the result of a split-off of the KVP and ARP. Its political spearheads were traditional 'left' themes of the 1970s such as development aid, environment, disarmament and the realisation of a democratic economy. European integration was not a part of that. For that reason – and because of its minor size – the PPR was no direct danger to the parliamentary consensus on expansion.

Debate in parliament

Referring to the 'volumes' of parliamentary documents of the 1960s, in which the Dutch parliament had consistently, but in vain, advocated expansion of the Communities, it was already observed in the written preparations to the debate that: 'In the opinion of a very wide majority […] [the accession treaty at issue] is an essential element, not to say the pinnacle of the development which was set in with the Schuman-declaration of 1950 […].[425]

In the subsequent plenary debate the coalition partners of the KVP, ARP and CHU and also the opposition party DS'70 once again made clear that they saw the expansion – in line with the argument of the government on policy consistency – as the realisation of one of the objectives of Dutch foreign policy.[426] The most interesting part of this remark is that the integration of Europe and the steps in this process were still described as part of the *foreign* policy of the Netherlands. It shows that in the early 1970s the political majority in the Netherlands in essence still perceived the process of European integration as a form of international cooperation between national Member States and had little eye for the fact that by the entering into force of the Treaties of Rome and the creation of the beginnings of a European legal order that had followed, the first seeds of a European polity – existing more or less autonomously – had begun to sprout. Although this majority strove after supranationalisation, its utterances in parliament show that there was still little awareness of what this might eventually lead to: a European polity that could not be controlled on the national level.

In addition to the policy consistency line of reasoning, the identity argument of the government also found assent in parliament. In particular the accession of the United Kingdom was appreciated for that reason, being a nation kindred to the Netherlands. Berkhouwer (VVD) even spoke of including 'European people' [in Dutch: *Europese mensen*], 'with whom we, the Dutch, traditionally have strong relationships, who are spiritually and materially akin and with whose cultures we have always enriched ourselves.'[427] By referring to age old connections between the UK and the Netherlands, the liberal MP enforced this claim. The KVP expressed the kinship between the United Kingdom and the Netherlands – the two naval powers of the seventeenth century – in concrete terms. The UK was, just like 'us', the people of the Netherland, 'less continentally orientated than many other countries'.[428] The Roman Catholic senator Pieter van Meeuwen – a thing quite remarkable since the accession of the Anglican UK would by no means strengthen the share of Roman Catholics in Europe – had similarly claimed in 1967 that a 'good European' should not look inwards. As he saw it, the European ideal reached beyond the continent and therefore the Dutch eyes should be directed overseas.[429] This perception of an ideal European mindset based on national preferences was shared by many in the Dutch parliament who principally opposed a unified Europe confined to the Six which might develop into a closed power block. The secular VVD and Catholic KVP were unanimous in their opinion that accession of the new Member States was needed to enhance this non-continental and open character of the integration process.

More than anything else, these considerations show what the parties hoped and desired the process of European integration to yield: a non-closed, non-continental and non-protectionist community in which the Netherlands would be surrounded by likeminded partners. When these negatively phrased characteristics are reversed into their positive opposites it becomes all the more clear that the Netherlands wished the European Communities to be open, Atlantically inclined and to respect free trade. Thus, a striking match again becomes visible between the perception of the Dutch mainstream political parties of what European unity should be and the time-honoured foreign policy preferences of the Netherlands. European integration was approached by these men and women as being not essentially different from the instrumental international partnerships that the Netherlands had concluded in its history before 1945. The element of sovereignty transference that markedly distinguished the integration process from all previous international partnerships that the Netherlands had hitherto taken part in, was not paid much attention to.

In fact, it seems that the perception of the MPs of where this process would lead to was still rather vague. The considerations of Berkhouwer and the KVP politicians on the characteristics of 'a European people' show that their conceptions were not well defined yet. Berkhouwer initially spoke of a 'European people' as if the peoples on the European continent were a natural unity, but by subsequently emphasising a special kinship between the English and the Dutch, not shared by other European partners, the notion of one European people was undermined. The KVP claim that the UK should accede because, together with the Netherlands, it made up a special non-continental part of Europe, further enhances the picture of a culturally divided Europe instead of showing a natural cultural connection between its members.

Notwithstanding the support for the consistency and identity claims of the government, there were voices in the political majority in favour of accession that called in question the reasoning that the accession of the UK would lead to more supranationalisation. It was common knowledge that the UK was reluctant – to say the least – towards the transference of political sovereignty to a European level of governance. This had already been noted in the Netherlands years before agreement had been reached on the conditions for its accession. In 1969, for instance, the prominent MP and Member of the European Parliament (MEP), Henk Vredeling (PvdA), had observed that English pragmatism to sign the *acquis communautaire*, should not be miss-interpreted as a fiat for supranational strengthening of the European Communities.

'The supranational set-up is, as is common knowledge', Vredeling argued, 'a very difficult issue for the English […] In some degree this will have to be extorted from the English government.'[430] Still not convinced of English commitment on this point in 1972, the paladins of a supranational and/or federal European entity expressed their concern on the effects of the accession of the UK for the supranational ambitions of the Netherlands. They made clear that the Netherlands should do its utmost to realise this form of integration, irrespective of the English ambitions.

With regard to this concern, the pro-accession parties in parliament let themselves easily satisfy by the soothing words of the Dutch government that the English signature on the European Treaties was a first important indication that the supranational dream was still feasible.[431] It illustrates the extent to which these parties were willing to absorb uncertainties and ambiguities in the process of European integration in order not to let these uncertainties be in the way of moving on.[432] This indifference towards the fundamental differences between the Dutch (supranational) and UK (intergovernmental) wish for the future of Europe raises the question why the Dutch parliament had been so fiercely set against the intergovernmentalism of the French whereas that of the UK was – for the time being – accepted? Less kinship and deep mistrust of French politics and French political leadership and, on the other hand, affinity with the UK as far as economic interests were concerned, were the main ground for this inconsistency in Dutch European reasoning. Entry of the United Kingdom into the EEC was deemed necessary in the first place. Supranationalisation was a concern for later then. To this end, the British intergovernmental whims and its late 1960s economic policies that had affected the Netherlands negatively, were overlooked.[433]

In the plenary debate on the accession, the critics of European integration campaigned against the convictions and assumptions of the pro-accession camp. In the written preparations to it, several MPs (not referred to by name) attacked the central premise, upheld by the political majority, that the accession of the new members – the UK in particular – would benefit the Dutch economy and would really shift the balance of power in the Community with a consequent advantage for the Netherlands. A monetary crisis that hit the countries of Western Europe in 1971 leading to great fluctuations in the value of the various European currencies – the British pound not in the least – made these MPs wonder whether accession of England would really benefit the Dutch economy.[434] In fact, these parliamentarians argued that the recent economic difficulties and interstate quarrels on how to

solve these problems showed that fundamental differences between the states of Western Europe were not reconcilable and therefore integration according to the EEC-model would unavoidably fail. More than anything, they claimed, these economic troubles revealed – once again – that the development of the EEC depended on the big and strong powers; Germany, France and, possibly soon, also the UK. The smaller and weaker states and the protection of their interests, so it was argued, would be eclipsed by the whims of the big and powerful ones. It was high time, these critical MPs concluded, that the Netherlands became captain of its own soul again by abandoning European integration as one of the main goals of its foreign policy.[435]

In this argument again the *topos* of the Netherlands being a small state was central. However, instead of connecting it to the need for international partnerships as the pro-European integration majority tended to do, these critical MPs linked it to the importance of remaining independent. They did not perceive European integration as a safeguard for guaranteeing the interests of the Dutch state, but rather as a process that deprived the nation-state of one of its most valuable traits: its sovereignty. In other words, they did not concur with the assumption of the political advocates of European integration that supranationalisation was solely to be seen as a win-win game.

In the plenary debate, the Protestant-conservative parties, the GPV most emphatically, proceeded with their attack on the fundamental premises underlying the claims of advocates of the accession. In their view, the government of the Netherlands and the political majority in parliament made a fundamental mistake when believing that the process of European integration as it had developed since the late 1940s would in practice also lead to the desired supranationalisation. Bart Verbrugh, the second GPV man in parliament after its widely respected political leader Pieter Jongeling, opposed the viability of a European supranational, or federal union in an international political reality ruled by nation-states and their individual interests. He emphasised that the natural bond between a people and their state was an essential connection that would be lacking within a politically unified Europe. This resulted in a remarkable *avant la lettre* phrasing of a theoretical viewpoint, very similar to the scholarly 'no demos thesis' that would become popular, both abroad and in the Netherlands, in the late 1990s:[436]

> 'Most people have struck root in these states some way. They feel bound to very simple realities: a home, a horizon and a social climate. Or to put it less commonplace, I would say that in the

> Netherlands there is a bond with a historic House of Orange, the Queen, a church, a quantity of literature in the Dutch language. […] I fear that concentrating too much on an imaginary Europe will remove the soul from the nations of our continent without a new soul getting into Europe. It has been said before: making agreements on cucumbers and jute threads does not build a living state. For that, faith is needed and a public philosophy that has roots.'[437]

And the process of European integration, the argument concluded, lacked such a rooted philosophy.

To the firm belief of the SGP and GPV, the politics of Charles de Gaulle and the economic setbacks of the early 1970s had shown that the reality of international politics was still determined by the ambitions and interests of independent states. To them claims of the development of a political European community were nothing else than hollow phrases that veiled the political reality. In order to support this statement, Verbrugh introduced a dissociation in which the political reality was disconnected from the political ideal: 'For the *real* Europe [italics added] still is a Europe of national states.'[438] With the pursuance of the ideal of European unity, the Netherlands would be deceived; eventually political practice would show that the small state of the Netherlands would need to dance attendance on the big powers of Germany, France and England.[439] With this argument the critical parties once again meddled with the logics applied by the advocates of European integration in which the process was pictured to have only positive effects for the Netherlands.

Apart from the political majority ignoring the disputability of its own logics, the thing that annoyed the MPs of the GPV and SGP equally, was the consistency argument as applied by the government in convincing parliament of new steps towards European unity. Ever more often, with the approval of every new European initiative, the Netherlands' ratification of the ECSC, EDC and Rome Treaties was framed as a plain authorisation for proceeding with the process of European integration; a spin that was fiercely contested by the conservative Christian parties. The governmental presentation of the Dutch path towards European supranational unity as a 'line of march'[440] leading to an indisputable end goal, or as a 'motor strategy'[441] was criticised: 'Such a strategy does not make a nice impression. People want to be able to make a choice and do not want to hear: take care, you have to, otherwise a dreadful accident will happen.'[442]

And in the view of the critics, a choice still existed. With the preambles of the Rome Treaties in his hand, the SGP representative Henk van Rossum enumerated the ratified goals of the European Communities: 'common action to ensure economic and social progress of their countries; removal of existing impediments; gradual lifting of restrictions in international trade by common trade policies; confirmation of alliance with the overseas countries and ensuring their prosperity.'[443] Subsequently he concluded: 'I do not read that to exactly mean a political unity. Nor […] a federation.'[444] In this way, after the line of argument had been questioned that presupposed only positive effects of deepening and widening of the European Communities, here the consistency argument was undermined. Whereas both the Council of Europe and a Dutch political majority claimed that with the ratification of the Treaties of Rome the Netherlands had taken on the obligation to expand and deepen the EEC, Van Rossum revealed that – from his perspective – also another, less far-reaching and less compelling interpretation was possible.

Ironically, the Protestant-conservative parties would ultimately decide to support the accession, precisely *because of* their doubts about the desirability and inevitability of progressive economic and political integration. As in the early 1970s the integration was still confined to the economic level – a form of integration that did not bother the Protestant-conservatives so much, since it was considered not be in conflict with the fundamentals of Dutch political sovereignty – they saw no harm in stretching the borders of marketplace Europe a bit. Bart Verbrugh phrased it pragmatically: 'In principle it makes no difference if in that cooperation there are six or ten countries involved.'[445] It is telling that Verbrugh chose the term of cooperation here, instead of integration. The Protestant-conservatives saw no harm in far-reaching economic *cooperation* which would most definitely benefit Dutch export; the Netherlands had successfully practiced international economic cooperation for ages. Political *integration*, defined as the merging of the Netherlands into a bigger political entity that would involve conferment of political sovereignty on a supranational level of governance, however, they still fiercely opposed.

Although at the time, this Christian-conservative criticism of the integration process was only shared by a small minority of the Dutch parliament, it should be noted that this was not the case within Dutch society as a whole. The Dutch political parties were not primarily elected on their European politics and therefore the (mis) match between their views on European integration and the wishes of the Dutch electorate could not easily be determined. Especially not

since the Dutch people had not been given any say in the process of European integration. The extent to which the European views of the various political parties were in keeping with the popular will would only become clear over time, when Europe started to grow and make itself more felt in daily practice and the European political agenda's of the national parties would by consequence become more important for them.

From defence towards consensus

Unpleasantly surprised, the Dutch government responded pugnaciously to the critical attack on the instrumental premise of the accession in which it was claimed that the small states would eventually be overrun by the bigger ones. It rebutted that the critics themselves started from a misconception. 'For it [is assumed]', the government explained, 'that there is […] a general conflict of interests between the two categories. Apart from the question what […] should be considered "strong" and "weak" countries, it should be pointed out that conflicts of interest in the Community differ from case to case.'[446]

Inconsistent with its earlier claims on the weak position of the Netherlands *vis-à-vis* powers such as France and Germany, the government here denied the existence of a permanent and insurmountable gap between strong (big) and weak (small) states, in order to reject the possibility of domination of the strong big ones. It reveals the rhetorical squirming the government was prepared to use in order to guarantee headway in the process of European integration now that the parliamentary opposition meddled with the fundamental presuppositions that the Dutch approach was built on. Subsequently – adding to the inconsistency – the government, implicitly confirming the weakness of the Netherlands, claimed that, as far as protection against dominance of one or more of the Member States needed to be guaranteed, this assurance needed to be found in further integration: 'European integration, led by strong European institutions [is] the best guarantee against that. Without integration only the law of the jungle will prevail, with all its attendant dangers.'[447] The government claimed that the mutual differences between the Six and the new Member States would turn out to be less powerful than the unity of the whole. Eventually the interest of the community as a whole should and would prevail over the differences in interests among the Member States.

Given the fact that this positive 'sum of the parts' prediction could not be based on evidence – the outcome of the integration process was unclear – it evidently was part of a rhetorical strategy by which the parliamentary audience was tempted to reconfirm their support for

the premise that European integration was absolutely essential for the well-being of the Netherlands. Again, the Dutch national interests were adduced as the ultimate reason for going along with the integration process. This was a thing remarkably paradoxical when seen in relation to the government's simultaneous prophecy that self-centred nationalistic reasoning would ultimately become history as the process of European integration proceeded.

The way the government, in its call for further integration, smartly turned an – in Perelman's terms – argument of succession into a pragmatic (instrumental) argument, deserves special attention. Although the existence of a general, continuous conflict of interests between the big and small members of the EEC was initially contested, an argument for further integration was subsequently sought in exactly such a conflict of interests. In other words, a solution for a problem following from the EEC model, was found in further developing and extending this model instead of rejecting it. It is again a paradox that logically results from the basic paradox that had guided the Netherlands in its European course since 1948: in order to survive as a state the Netherlands should merge into a European entity in which the national state would ultimately become – at least to a certain extent– irrelevant.

The rhetorical technique by which the process of integration was presented as the solution for a problem that this same process created, was seized upon at various points in the defence of government. With regard to, for instance, the prolonged complaints of the left-wing parties in parliament that further integration would only lead to further concentration of power in the hands a few industrial concerns and to negative consequences for wage labourers, farmers and small tradesmen, the government advised a stronger European Commission and EP, that would respectively supervise and control the coming about and observance of European competition rules.[448] Again, further integration was presented as the solution for a problem that might in fact be the consequence of integration.

After having dealt with the criticism on the instrumental reasoning that underlay the support of the government for the accession, the Protestant-conservative attack on the consistency argument needed to be dealt with. It stands out that the Dutch government tactfully manoeuvred around the contested point. The (probably) too hazardous questions of political necessity, desirability or inevitability of a European federation were not entered into. Instead, the government put an effort into convincing the Protestant-conservative parties that the positive consequences of the realisation of such a federation would in the end outweigh their sad expectations.

So in fact, the consistency argument was turned into an instrumental argument in an attempt to convince the critics; it illustrates the trust of the Dutch government in the wide parliamentary appreciation of instrumental reasoning in the process of European integration.

In reaction to the anxiety of the Protestant-conservatives with regard to the loss of Dutch national characteristics in the process of supranationalising or federalising Europe, the government assumed a comforting role. In reference to a comment of Bart Verbrugh (GPV) that the realisation of a European federation would endanger the existence of the Dutch monarchy, the State Secretary of European affairs, Westerterp, stated that also in a European federation the states would be able to decide on certain crucial policy-areas. For that reason he did not see how the Dutch Royal House would be affected.[449] The Minister of Foreign Affairs, Norbert Schmelzer, responded in a similar manner to Verbrugh and Van Rossum (SGP): '[…] such a [federal] community does not necessarily [sic!] mean that the national identity, the national character, the language, etc. are threatened'[450] Schmelzer's statement raises questions in a context in which the government's aim was the development of a politically integrated, supranational Europe. What limits or conditions should exactly be observed in the integration process in order to not let the national identity be threatened? And did the other Five feel the same? The Netherlands would not be able to set the rules of the federal game all by itself. However, such key questions were not entered into.

It is striking that the Dutch government saw that fear of losing defining elements of the political and cultural identity of the Netherlands was the essence of the Protestant-conservative anxieties. As far as Minister Schmelzer and State Secretary Westerterp reacted to these concerns, the worries were taken seriously. Yet, the crucial element in the arguments of Verbrugh and Van Rossum – i.e. that the teleology of supranationalisation followed by the government was in essence a rhetorical construct and not a compulsory reality that the Netherlands was obliged to follow – was not entered into. Apparently, the objective was beyond discussion for the administration led by prime minister Barend Biesheuvel. Seen from this perspective, the replies of Westerterp and Schmelzer were not much more than – to put it popularly – an attempt to keep the holes plugged.

And the reactions show it was experienced exactly this way by the Protestant-conservative MPs. Dissatisfied with the government's reaction, Henk van Rossum commented that both Westerterp and Schmelzer had neglected the fundamental point, namely 'that we are sliding down to greater competences of supranational organs, as if that

should be seen as an irreversible process. I do not believe that yet.'[451] Bart Verbrugh articulated the crux of the matter more academically:

> 'I thought it very disappointing that the Minister adopted – of all things – that which I oppose, i.e. pointing out simplistically a political community as a consequence of an economic community and of a customs union. He alleged: those are the consequences. I believe that starting out like that implies laying material foundations for a European political union. The political community results from it; that, exactly, is my great objection.[452]

Van Rossum and Verbrugh claimed that by treating the process of supranationalisation as an inevitability, effectively and principally agreed on by a range of pro-integration votes of the Dutch parliament since the adoption of the motion Van der Goes van Naters/Serrarens (1948), the process was pushed through, whereas the fundamental assumptions underlying the Dutch political support for European supranational integration were withdrawn from further conceptual debate.

Here the Protestant-conservatives referred to a fundamental element in the approach of the Dutch government in advocating the accession of the new members, the UK in particular. The tendency of successive Dutch governments to present the Dutch approval of earlier agreements on European integration as a basis for further integration, yielded the process a teleological aura. This led to disregard for the fact that proceeding on the way towards European integration was nothing else than a political choice based on political preferences, convictions, and assumptions held by a political majority. It is the same point that Henk van Rossum (SGP) had made when he claimed that the preambles of the Rome Treaties did not inevitably lead to political integration. Certainly, they portrayed 'an ever closer union' as the ultimate goal and, indeed, called for other people to join in the efforts of the Communities, but they did not prescribe in any way a supranational or federal political unity.

The observation of the Christian-conservative 'faultfinders', however, did not alter the fact that a parliamentary majority in favour of European integration still liked the earlier agreements on European integration to function as a basis or even a catalyst for new steps; a majority by which the government knew itself supported. For that reason the government could conclude its riposte against the objections in parliament with confidence: 'the Government is of the opinion that there is no reason whatsoever to give up the European integration as

one of the main objectives of Dutch foreign policy. […] it does not see that it should abandon any support to expansion of the EEC.'[453]

On 14 September 1972 a new step in the process was taken when the Dutch Lower House – without a voting by call – gave its consent to accession to the EEC of Denmark, Ireland, Norway and the United Kingdom. Approval in the Upper House followed on 14 November of that same year. In the minutes of the meeting in the Lower House it was recorded that the MPs of the CPN and PSP had voted against the treaty. The same was done in the Upper House for the CPN senators.

In between the Dutch parliamentary voting rounds, on 25 September 1972, a referendum in Norway revealed that the Norwegian people expressed themselves against the entry of their country into the European Communities. The Norwegian government thereupon decided to abandon the idea of accession, much to the disappointment of the Dutch political centre.[454] From 1 January 1973 onwards, the European Communities proceeded as the Europe of the Nine.

Compared to the considerations on the Merger Treaty it stands out that – again – both the government and a majority in parliament started from the central notion that progressive European integration would be in the interest of the Netherlands. With the accession of the new members, the process of European integration was considered to receive a more open, non-protectionist, non-French and more Atlantic nature and thus was believed to get more in line with the Dutch traditional foreign and economic policy preferences. The supranationalisation of the European institutes that was considered to follow from the accession was also believed to favour the Netherlands. A strong European Commission and Parliament, so it was argued, would neutralise the differences in interests between big and small states and would thus benefit the small states.

These lines of argument show that the majority vote in favour of the accession was aimed at strengthening the international position of the Netherlands. The existence of the basic paradox that had guided the Netherlands in its policy on European integration since 1948 was again reconfirmed: in order to preserve the state of the Netherlands it was directed by its political elite to merge into a united Europe. What was not reckoned with or elaborated on was that, with the development of an 'ever closer union', governed by strong European institutions, the Netherlands might ultimately lose influence on the course of the process, even to the extent that the sovereign state of the Netherlands might no longer be claimed to exist. If and how the process of European integration would in such an advanced stage still work in favour of the Netherlands could not be foreseen.

Confronted with the arguments of the political parties critical of European integration who seriously called into question that European integration would work in favour of the Netherlands, the government – supported by the political majority – chose to look away. Potential uncertainties and downsides that were raised by the critics were soothed down with the argument that further integration would solve them. It shows that by 1972, the Dutch political majority had started to believe in its own teleological European ideal to such an extent that any fundamental debate on the essential assumptions was judged superfluous.

3.4 Pursuing a Strong and Directly Elected EP (1977)

In Article 138, subsection 3 of the EEC Treaty (1957) it had been laid down that in the process of building European unity a directly elected European assembly should eventually develop.[455] In due time, the Council of Ministers were to set the date for its election.[456] From 1958 onwards – the year that the three representative assemblies of the European Communities had merged into one Parliamentary *Assemblée* – the states and institutions involved in the process of European integration had quarrelled about the why's and when's of such elections.

The representatives in Strasbourg, for instance, consistently argued for the Assembly to become a real parliament (i.e. a European equivalent of the national houses of representatives), for the competences of the EP to be stretched and the connection between the representatives and those whom they represented to be strengthened by means of direct elections. As a part of their mission, in March 1962, these members themselves decided to formally rename the parliamentary assembly 'European Parliament' (EP); a rhetorical coup of great importance in the process of developing an ever closer union through which the parliament factually expressed that 'even though we do not have the electorate yet, because of the mere promise we have transcended the class of meetings of national parliamentarians we are familiar with such as for instance NATO and the Council of Europe.'[457] The Members of the European Parliament (MEPs) were supported in their striving by the European Commission which had a general interest in the strengthening of the European institutions: a powerful supranational EP was considered to stimulate the coming into being of a powerful supranational executive. A consistent majority of the Dutch parliament and the successive Dutch governments of the 1960s

and 1970s also supported the idea of a stronger and directly elected EP. It was considered to be an essential element of a strong supranational Europe; a form – the previous sections have shown – from which the Netherlands would benefit optimally, since it believed to have a greater say in a supranational community in which the Member States would have declared themselves equals than in a lose intergovernmental cooperative alliance in which the big states would still call the tune.

However, the French president Charles de Gaulle (1959-1969), but also his successors Georges Pompidou (1969-1974) and Valérie Giscard d'Estaing (1974-1981), held the opposite view: important parts of the power of the European communities should remain rested with the national governments. A strong European Parliament, invested with real legislative powers – the presumption was that as soon as direct elections would be held, the call for power of the EP would also increase – was not very compatible with their intergovernmental conception of European unity. For years, the French refused to use the term 'European parliament' instead of Parliamentary *Assemblée*, because they saw it as a source of dangerous misunderstandings. A 'European parliament', they reasoned, presupposed a 'European people'; a concept that according to the intergovernmentally-inclined French politicians did not exist.[458] Also with regard to the objective of realising direct elections, France remained a principal obstructionist.

Years went by in which these diverging positions precluded a decision in the Council of Ministers on the matter of direct elections. A breakthrough in the deadlock was reached at the European Council, held in Paris on 9 and 10 December 1974, where the opposite stances of the Netherlands and France unexpectedly turned out to be a chance for realising direct elections of the EP after all. On this occasion, the recently elected French leader Giscard d'Estaing expressed that he was willing to agree with direct elections for the EP in exchange for institutionalising the European Council; the intergovernmental forum for discussion and decision making of leaders of the Member States (such as the one in Paris in 1974) that had hitherto been held on an *ad hoc* basis in order to discuss and enforce decisions on current issues. In fact, this proposal signified the resurrection of classical diplomacy within the framework of the process of European integration.[459] Exactly for that reason, the Netherlands – both the government and parliament – held fundamental objections against the formalisation of bringing about such an intergovernmental organ. The forum would potentially increase intergovernmental decision-making in the European Communities and this ran counter to the Dutch supranational preferences. It would moreover meddle with the unwritten Dutch constitutional rule that the

prime-minister was only a *primus inter pares* and could not claim the privilege to decide in European affairs on behalf of his colleagues, the Foreign Minister in particular, since only the Minister-President would be invited to the European Council.

Despite these objections, however, the Dutch government, led by the social-democrat Joop den Uyl (PvdA), did not resist the proposal of Giscard d'Estaing that suddenly brought the long desired objective of direct elections of the EP in sight.[460] The Dutch were convinced that, in the long run, direct elections of the EP would significantly contribute to supranationalisation of the European Communities. The establishment of the European Council was perceived as a temporary necessary evil. Eventually, the Nine agreed in Paris that direct elections should take place in or after 1978. On 20 September 1976 the Decision and Act 'concerning the election of the representatives of the Assembly by direct universal suffrage' was signed, which in the Netherlands was held to have the status of an international agreement that needed to be approved by parliament like any other treaty.[461]

With the introduction of direct elections, the amount of seats in the EP was to be increased from 198 to 410, of which the Netherlands would henceforth hold 25 compared to 14 in the old situation. It signified a decrease of the Dutch share of almost 1% in the total amount of seats. An important change in the functioning of the parliament, relevant for the Netherlands, was that under Article 5 of the Act, the system of a double membership of an MP of both the national and the European parliament was still possible but could no longer be held to be obligatory. By consequence, the state of the Netherlands was not allowed any longer to uphold the system of a compulsory double mandate of the parliamentarians that were returned to the European parliament.[462] This change in regulations broke the strong connection that had, as a result of the double mandate, up until then existed between the Dutch representatives of the national parliament and the European parliament.

Position of the government

In the Den Uyl cabinet the office of Foreign Minister was held by the human rights specialist Max van der Stoel (PvdA). One of the early Dutch specialists of European Law, Laurens Jan Brinkhorst (D'66), was appointed as his State Secretary, mainly responsible for European Affairs. The ARP politician Willem de Gaay Fortman became the Minister of the Interior. These three members of the government presented the draft Bill of approval on the European Act on direct elections of the EP to the Dutch parliament on 25 February 1977. In

the explanatory memorandum the government expressed its joy on the realisation of a European agreement on direct elections of the EP for three particular reasons. Firstly, these elections were praised because the government believed them to break the vicious circle of a European parliament without extensive competences because it was not democratically chosen and vice versa. Secondly, and very important since it heralded a new element in the Dutch political debates on European integration, there was the argument of involving the Dutch citizen in the process. Without entering into the causes, the government observed that the involvement of national citizens in the process of European integration had, until then, left much to be desired. This was a problem not only because the 'élan' of the integration process was in danger of decline, but also since the national citizen was to an ever greater extent affected by this process: '[the European] legal order [is getting] increasingly interwoven […] with the national legal order and as a consequence citizens [are] increasingly affected by Community regulations.'[463] This interesting remark reveals that the government was aware that, as a consequence of the growing intertwining of the two legal orders, – the result of the previous European Treaties and ECJ rulings such as *Van Gend en Loos* en *Costa-ENEL*– the need had increased for a stronger democratic legitimisation of the process of European integration.

A third and last reason for the government to applaud the organisation of direct elections was that it believed that only through direct elections the EP could develop into a full-fledged European parliament with corresponding competences. This argument seems to be closely connected to, or even overlapping, the first argument. The bottom-line was that a strong, well-functioning EP was considered essential for the development of a strong, well-functioning democratic Europe. The working of the parliamentary democracy on a national level was taken as an example: 'Principles of democracy are central in all the Member States of the Community and nothing would be more obvious than that the same holds good in the European Communities.'[464] This comment speaks volumes on the conception of a unified Europe of the Den Uyl government. It shows, most importantly, how the organisational principles of the nation state were taken as the conceptual starting point for the construction of a supranational entity. Logically extrapolating this thought, this implied that, ultimately, a united Europe was imagined to become a fully sovereign layer of government, ruled by its own sovereign institutions. The political complexity of establishing such a new sovereign entity, strongly intertwined with the order of the nation-state as it had come into

being in the 19th century, and yet independent of it, was not elaborated on. As has been shown in the previous sections, this is illustrative of the mindset of the Dutch governmental elite with which European integration was approached as a manageable process, that could be steered in a, for the Netherlands, desired direction and in which the possible downsides were not dwelled upon. A mindset, it should be noted, that until then had not been proven wrong, since, between 1948 and 1979, the European Community *had* – slowly but steadily – developed indeed in the direction that a Dutch political majority had in mind. For its shortcomings coming to light, so it would turn out, a new decade needed to break.

Since the Decision and Act on Elections by Direct Suffrage was again not considered incompatible with the Dutch constitution in any regard, Den Uyl's government presented it to the Dutch parliament for approval in accordance with the procedure as laid down in Article 60, subsection 2 of the Dutch constitution. An approval procedure that had by now become the standard and was not very likely to lead to heated discussion in parliament.

In general, heated discussions in parliament seemed improbable. The political relations in the Dutch parliament with regard to the process of European integration were still largely the same as earlier in the 1970s. The coalition partners of the PvdA, KVP, ARP, PPR and D'66 were, without exception, still in favour of a further, supranational development and organisation of the European institutions. Their support for direct elections could be counted on. Also the opposition parties of the VVD and CHU were still among the proponents of further European integration. For the rest, the political opposition was composed of the critics of European integration of the CPN, PSP, GPV and SGP; with only 7 of 150 seats in the Lower House a weak political segment.

Notwithstanding the persistent support for European integration of large sections in parliament, signs of a shift of opinion can be observed in the public intellectual debate on this process, however. During the 1960s and 1970s the public debate on European integration in the Netherlands was increasingly characterised by gloominess. Gaullism, oil crises and economic recession had shown that in times of difficulties the members still tended to withdraw behind the safe fence of the nation state. Although the ideal of a truly united Europe was not abandoned by Dutch thinkers on the subject, disappointments on the path to this ideal had led to a more sceptical attitude.[465] In the course of 1970s and beyond, this scepticism resulted in the rise of a group of public intellectuals that started to turn their backs on the

federal ideal and argued instead in favour of European integration of a more intergovernmental character. In other words, a spirit of intergovernmentalism seemed to be abroad.[466] The direct elections of the EP as a step towards a more supranational Europe, ran counter to this tendency. However, since public intellectual criticism on the European ideal was not yet overpowering, there was no strong resistance against the proposal of direct elections. The public intellectual advocates of such elections propagated the view to see it as a means to renew the enthusiasm for the process of European integration in Dutch society. So despite the shifting tendency in the public intellectual debate, going by the dominant positive sounds with which the proposal for direct elections was welcomed, the government did not need to reckon with fierce public protest on its presentation of the plan.

Debate in parliament

In June 1977, the parliamentary debate on the Dutch Bill of Approval concerning the Decision and Act on Direct Elections took place in both the Lower and Upper House. From the outset of the discussion it was clear that a majority of the Dutch parliament would endorse the bill indeed. For years already, this majority had argued in favour of a stronger European Parliament with a mandate and real competences. In fact, it had been one of its main motivations behind the merger of the three executives in 1965. In addition, during the debate on approval of accession of the four latest Member States, the Vredeling motion, proposed by Henk Vredeling (PvdA), had called for setting a term for the organisation of direct elections of the EP.[467] For this reason it is not surprising that during the debate, various MPs expressed their feeling that the organisation of direct elections was nothing more than performing 'a duty that had already existed for a long time.'[468] Moreover, similar to the reasoning of the government, also among pro-integration parliamentarians the idea had taken root that for a true democratically legitimate European community to develop, the European citizens needed to be involved in the process. It is hard to accurately pin point how and since when this idea had taken root in the Dutch parliament. Clear, however, is that the MP Eef Verwoert (DS'70), for instance, observed that the European Movement and similar organisations that had been set up to encourage enthusiasm for the integration process in the Netherlands, had failed in their task and, for that reason, other means needed to be employed:

> 'However much regard I have for the activities of the European Movement, it has still continued to stay an elitist company. It has

worked intensively on the deepening of the European idea, but in doing so has nevertheless found insufficient response in large sections of Dutch society.'[469]

This feeling was also expressed by the recurrent call in the Dutch parliament in these years for improvement of the visibility of the process by, for instance, gradually removing the customs signs at the border-crossings or launching a uniform European passport: 'it is only a minimal indication for people, who in that way consequently see that something has been done.'[470] The advocates of further integration viewed the organisation of direct elections of the EP as an initiative that would also contribute to this goal. This emphasis on the lack of visibility of the integration process for the Dutch people is striking, given the fact that in the previous decades these parties had supported the development of approval procedures that to a great extent withdrew new European treaties from any fundamental debate in and outside parliament.

In addition to the considerations of democratisation, a stronger involvement of the national citizens was also emphasised for reasons of supranationalisation. In order to make a success of that process, involvement of the national populations could not be neglected. The majority view in parliament was that a truly supranational level of governance presupposed a full dress supranational parliament. Such a parliament in its turn presupposed a connection between the representatives and those who were represented. A change of mentality had to be brought about with the Dutch people: 'People must learn to think supranationally.'[471] Direct elections were seen as a means in this process.

A striking lack of criticism existed amongst the Dutch political majority with regard to the concept of direct elections. The mainstream political parties shared a conception of a unified Europe of which a directly elected parliament was an essential part. The lack of any debate as regards contents contrasts sharply with the sometimes extensive discussions on what comes across as relatively simple organisational details, such as the day on which the direct elections would be organised, the moment at which the results would be made public and the exact voting procedure.[472] This focus on small details perfectly fits the leaning towards European integration in which the grand questions were considered to have been answered and in which the objectives were clear and the showdown between the Member States needed to focus on influence concerning organisational preferences.

Nor did the principal opponents of progressive European integration put forward much on the logics of democratisation and supranationalisation as applied by the proponents. One of the few examples of a rebuttal – albeit rather implicit – of the democratisation line of argument was the comment of Bart Verbrugh (GPV): '[…] now we get a Europe of the parliamentarians. When shall we get a Europe of the people?'[473] This – again – was an *avant la lettre* form of the no demos thesis that would become better known in the 1990s. Instead of logically linking direct elections to involvement of the national citizens in the integration project, as done by advocates of the elections, Verbrugh thought that the desired involvement and direct elections were essentially different. A Europe of technocrats, he claimed, whether directly elected or not, was not the same as a Europe with which people felt connected. Although not the most convincing argument since the same be claimed with regard to the Dutch elections and democratic representation, Verbrugh's comment was in essence an attack on the premise that a directly elected parliament yielded a democratic Europe. In addition, in order to undermine the claim of supranationalisation through direct elections, the GPV brought forward the fact that both France, the UK and Denmark were notorious for not wanting the EP to get many competences: 'For neither the French, nor the English, nor the Danes are in any way in favour of a substantial control of the European Parliament and that is why that substantial control will not come about.'[474]

The real spice, however, was brought to the debate when all of a sudden and contrary to the majority consensus that the Act at stake could be approved in accordance with Article 60, subsection 2 of the Dutch constitution, the Communists questioned whether direct election of the EP was compatible with the Dutch constitution. Marcus Bakker started by claiming that direct elections for the EP were in conflict with Article 88 of the Dutch constitution in which it was stated that 'the States-General represent the whole Dutch nation.' Based on this provision, the Dutch people as a whole, Bakker claimed, were competent to elect their representation. But following Dutch constitutional logic, he argued, only *one* representation could be chosen, because the people of the Netherlands had only one mandate to give. Here, a conflict with the introduction of direct elections arose: 'If these elections take place, the Dutch will elect two kinds of representation. […] That is to say that, from that moment on, the Dutch nation gives away two mandates.'[475] According to Bakker, this was a political problem and not a merely academic one. Ultimately, the giving of two separate mandates – one to the Dutch States-General and one

to the Dutch representation in Europe – could result in conflict. Bakker clarified his stance with a typically Communist spectre:

> 'It is possible that a majority of the Dutch Euro-MP's will take a view which boils down to supporting measures or decisions which amount to […] German power building, whereas the Dutch Parliament thinks or acts to the contrary. The question is then, who has got the real mandate of the Dutch people.'[476]

His argument was dictated by the abolishment of the practice that, since the establishment of the ECSC and EEC Assemblies, the Dutch representatives in the EP also had a seat in the national parliament. This had implied that in their work on the European level the Dutch MEPs were directly connected to the national political level. The oath with which these parliamentarians had pledged allegiance to the King and the Dutch constitution at their installation in the Dutch parliament solemnly confirmed the connection between the Dutch M(E)Ps and their state, no matter what other post they held. The abolishment of this compulsory double parliamentary membership then would lead to a crucial change in this relation between the Dutch political community and the constitutional principles of the Netherlands. Henceforth, the connection that had existed between Dutch MEPs and the *national* parliamentary representation of the Dutch people, would no longer exist. This was the basis on which the CPN could build its argument on the development of tension between the constitutional foundation of the parliamentary democracy in the Netherlands and the organisation of direct elections of the EP.

Throughout the parliamentary debate, CPN representatives insisted on the unconstitutionality of the proposed elections in order to advise against approval.[477] They argued that instead of serving the democratic system on the European level, the net result of the elections would be the sapping and subordination of the Dutch democracy.[478] It was an attack on the premises that bringing about a supranational democratic order would go hand in hand with positive results for the Netherlands and had no critical constitutional implications. The party was supported in its viewpoint by the GPV and the PSP.[479]

Bakker added that direct elections were improperly applied in the process of European integration. In the history of developing states, parliaments had been established to balance the power of the administration. In the process of European integration, however, a parliament and, moreover, electoral suffrage was used as an instrument to bring about a political union: 'suffrage [is] as it were put in to serve

another process'[480] Bakker's complaint touched upon the core of the political strategy of instrumental supranationalism. Inspired by his political preferences, he claimed that the Dutch constitution should function as a brake on this strategy. The Communist received support of Bart Verbrugh who echoed this objection from his GPV background.[481]

From defence towards consensus

Not surprisingly, those in parliament and government who believed in instrumental supranationalism had no intention to let these protests interfere with their political goals. Hans van Mierlo, MP on behalf of D66, countered Bakker on his constitutional interpretation via the legal logic of in- and exclusiveness of the Dutch constitutional document. In his opinion the Dutch constitution did not articulate that the people of the Netherlands, as a whole, had only one mandate to give to a representative body: 'What the Constitution says is that, when the Dutch people elect the national parliament, it is theirs by mandate. It does not exclude a verdict of the Dutch as a whole on another issue.'[482] In this way, Van Mierlo created a dissociation in which the distribution of mandates to representatives of the Dutch people, in accordance with Article 88 of the Dutch constitution, was disconnected from any further condition on its exclusiveness. It was an attempt to stretch the purport of the Constitution by arguing that it did not prohibit things that had not explicitly been laid down in its text and simultaneously passing over the underlying political question that Bakker had broached: the desirability of a constitutional brake on the process of European integration.

The State Secretary on European Affairs Laurens Jan Brinkhorst (D66) sided with his party member Van Mierlo on the technicality of non-exclusiveness of the Dutch constitution, but also went further. By elaborating on the political intention of the constitutional legislator [in Dutch: *de grondwetgever*] of 1953, he lifted the interpretation of Article 88 to an entirely new level: 'For he [the constitutional legislator of 1953] did not intend the constitution to be the highest authority, but wanted to give it a place within the framework of an international legal order.'[483] On the basis of Article 63, in which the possibility to deviate from the constitution was laid down and Article 67 that stated that national competences in the field of legislature, governance and the judiciary could be conferred on international organisations, he proclaimed that it was in the tradition of the Dutch society to view, in the pursuance of an international legal order, the national legal order *as a function* of the international legal order.[484] Further interpreting the change of 1953, it followed from the internal logic of the constitutional

system that parliament 'since it loses powers in the national context […] the national electorate can positively be given the mandate to elect a European representation.'[485] Pressing home his claims, Brinkhorst stated that:

> 'I [am not able] to see, why essentially there is a difference between the situation in which we have the electorate choose both the Provincial [Councils] and the Lower House, and the situation in which the same people elect the Lower House as well as representatives of the European Parliament.'[486]

Brinkhorst presented the matters as self-evident. In his view, the constitutional reform of 1953 was to be interpreted as subordinating the Dutch polity to an international legal order. As a consequence, he claimed, the transference of sovereignty to this international legal order was legitimate, and so was correcting the democratic deficit that this transference implied by directly electing a new representation on the European level. In Brinkhorst's view, the Dutch constitution welcomed – or even demanded – this development rather than obstructed it. It immediately stands out that this line of constitutional interpretation perfectly befitted the political objective that Brinkhorst and his party strove after: paving the way for a unified Europe. Considerations that might hinder this political goal, such as the notion of stronger national democratic control by parliament that had inspired the constitutional reform of 1953, were not addressed. The consequences of the preferred constitutional interpretation for the democratic influence of the Dutch people in the process of European integration was not at all considered in Brinkhorst's contribution. Nor was the notion that his view represented only one interpretation of the Dutch constitution and that the essence of the dispute between the CPN and D'66 precisely went back to contestation on how to interpret the Dutch constitution. Here, Brinkhorst made effective use of the inviolable character of the Dutch constitutional articles on international treaty making as they had been treated in parliament since 1953.

Arguments and images that strengthened the desirability, necessity or obviousness of bringing about a federally integrated European order, were magnified by Brinkhorst. A typical example in his plea is the analogy that he constructed of elections for the European and Dutch Lower House and the elections for the Dutch Provincial Councils and the Lower House. With this analogy Brinkhorst in fact expressed his political desire to view European integration as a process in which the Dutch Lower House related to the European Parliament, the same

way as the Dutch Provincial Councils related to the Lower House in the Netherlands. The analogy rested on the starting point that the organisation of the Netherlands could be compared with, or translated into the organisation of a united Europe. In other words, Brinkhorst showed his hand in the sense that he and his political allies strove after a European order, based on the organisational principles of the nation-state, in which the European level of governance would to a large extent determine the competences of the national level; a unified Europe, to put it differently, as a supra-nation-state. Fundamental questions on the validity of this logic were not entered into. Was European integration truly to be compared to the process of organising the Dutch state? In the 19th century, Johan Thorbecke and his followers had been able to set the political relations between the various governmental levels themselves. A thing that would not be possible within a European order in which the Netherlands would not call the tune all by itself; a historical difference with significant implications which was not taken into consideration by Brinkhorst.

The fact that the State Secretary allowed himself this much openness on such a – judged with historical distance – revolutionary goal can only be explained from the general consensus with a political majority in these years on the importance and need of pursuing such a far-reaching European unity. Three decennia later, a similar statement of a member of the government would not have passed the Dutch Lower House this easily.

The rhetorical technique applied by Brinkhorst, supported the effectiveness of his claim. Again, a liaison of succession, was turned into a pragmatic argument. To put it less abstract: the problem of a lack of democratic control, following from the process of conferring sovereignty on the European level, was suggested to be solved through bringing European integration further. In fact, rather than the one development logically or necessarily leading to the other, however, Brinkhorst's words show that the Dutch government allowed democratisation – i.e. direct elections – to result from the *de jure* creation of a European political community. In doing that, the substantive fundament of this political community was further fortified. Viewed from this perspective, again the approach of Laurens Jan Brinkhorst to the Dutch constitution testified of his political preference in favour of European integration and at the same time effectively contributed to this goal.

Following from the broad political consensus that existed in parliament regarding both the objective of European integration – although no detailed conceptual consensus existed, a general federal

perspective was still supported among the political mainstream – and the instrumental function of the Dutch constitution in this process, Brinkhorst's claims were not repudiated nor questioned by the political majority. More than that, they were embraced, just like the Act on direct elections of the EP by universal suffrage, without a voting by call. On 22 and 28 June 1977 it was passed in respectively the Dutch Lower and Upper House. The Euro-sceptics of the CPN, GPV, PSP and SGP, who voted against the Act, did not have a chance. The political will to achieve European integration eliminated the constitutional argument in advance; a situation that Hans van Mierlo worded aptly. The process of European integration was, as he saw it, a transition in which hitherto strange and not existing procedures needed to be applied in order to reach the ultimate goal; a remarkable comment for a member of the party usually passionately pleading in favour of full democratic transparency:

> 'That Europe cannot come into existence […] but in a kind of half-light, in which there will be constant tensions between the Europe that has not come about yet but that is in the making and the components from which it originates. […] Indeed, by way of half-vague situations in which logic and the consistency of the familiar existing order are devalued for the benefit of the coming into being of the new order. That has to be accepted.'[487]

Van Mierlo touched the heart of the matter when he pointed out that this acceptation depended on political preferences: 'The more you get convinced that Europe must come about, the more you tend to accept the resulting frictions with the national existing order.'[488] In order to bring a united Europe closer, a majority in the Dutch parliament was indeed willing to sacrifice the direct connection that had hitherto existed between the national MPs, and those representing the Netherlands in the European parliament, They did not want the national constitution to function as a brake in the process of European integration. On the contrary, they were determined to make a good pace.

In the Netherlands the first direct elections of the EP took place on 7 June 1979. The turnout was 58.1%; disappointingly low according to the Dutch political establishment. Up until this very day, however, this turnout has never been equalled. It is one of the elements contributing to the notion that the process of European integration suffers from a democratic deficit. In this respect, the introduction of direct elections for the EP has not brought the major positive effects it was expected

to bring. Until today this is grist to the mill of the Dutch critics of the process of European integration who explain this poor turnout as a sign that the Dutch have still not warmed to the idea of a politically unified Europe.

For the advocates of progressive European integration, however, the advantage of the new arrangements was that, with setting up direct elections for the EP, the pre-federal institutional framework of the European Communities was strengthened again. Step by step the reality of a truly supranational Europe, pursued by the Dutch political mainstream because it believed it to serve the interests of the Netherlands, came closer. Moreover, with the approval of direct European elections in the Netherlands, another constitutional hurdle to the realisation of this goal had been levelled: with a large majority, parliament had rejected the interpretation that the Dutch people had only one democratic mandate to give away. A leading argument was found in the 'intent of the constitutional legislator' of 1953. By accepting this argument, the Dutch political majority moved further along the path of making sacrosanct the constitutional changes of the early 1950s. Simultaneously the seed was planted – which was not fundamentally nor widely protested against! – that the Netherlands was to a unified Europe as the Dutch provinces were to the Netherlands. Thus, in the Netherlands the way for new steps towards a federal, or an even more than federal Europe, had been paved.

The Dutch approach towards the various developments in the process of European integration between 1964 and 1979 was based then on the strategy of instrumental supranationalism. This strategy implied that supranationalisation of European institutions and decision-making procedures were strived after, as it was considered to benefit the Netherlands politically and economically. The merger of the executives (1965) was pushed by the Netherlands since it was believed to strengthen the European executive power. This in itself was deemed beneficial because stronger European institutions were considered to go at the expense of the ability of France to dominate the integration process. With the accession of four new members in 1973 – the UK in particular – a long cherished wish of the Netherlands was fulfilled. This accession was considered to be of advantage to the Netherlands both economically and politically. Entry of the UK into the EEC was – again – considered to imply the strengthening of a counterweight against the domination of the French protectionists and to contribute to the Atlantic preferences of the Netherlands.

The introduction of direct elections to the EP, similar to the merger, was considered to stimulate the necessary supranationalisation.

The democratising effect of such direct elections was applauded because it would legitimise the process of European integration. The political elite of the Netherlands had increasingly begun to worry about the lack of involvement and interest of the Dutch people in the integration process. In their belief, a truly supranational community could not develop without involvement of the citizens of the Member States. Direct elections to the European Parliament were considered a means to stimulate both that involvement and, indirectly, supranationalisation.

The main premise behind the instrumental supranationalist philosophy in parliament was that in a supranational Europe the influence of a small country would be greater than in an intergovernmental set-up. Within a supranational structure, as the Minister of Foreign Affairs Norbert Schmelzer had put it, European decisions affecting the Netherlands would not be taken without the Netherlands. Instead, the Netherlands, so it was reasoned, would have influence on the European course of events from within.[489] To put it sharper: the mindset of the Dutch political majority was built around the notion that the power of the European Communities was in inverse proportion to the influence that the big, politically strong members could exert individually.

This line of thinking speaks volumes about the way the Netherlands perceived itself as an agent on the European stage. The Dutch political elite in majority agreed that the Netherlands was a tiny, weak player, running the risk of becoming a puppet of the bigger powers of Europe. To prevent this from happening, the European integration strategy of the Netherlands was aimed at creating a balance in which the differences in power between the various agents were smoothed away. This notion, in its turn, reveals the trust of the Dutch political elite in European agreements, in the functioning of the European institutions and the eventual prevailing of the common interest in a supranational Europe. Indeed, the political majority seemed convinced that such a common interest could be defined and recognised by the nine members of the European communities and its prevalence guaranteed by their mutual agreements. Even more remarkable is the belief that seemed to have taken root, that this common interest would match the Dutch preferences, regardless the issue at stake or the specific historical circumstances.

In the various parliamentary debates it stands out that doubts, the possible downsides or unintended consequences of supranationalisation did not get much attention. By strengthening the supranational ties, the participants would become ever more interconnected in the process of European integration. An alternative

way of looking at the process therefore – in the Dutch political spectrum the ultra left (CPN, PSP) and the Protestant-conservatives represented this view in their own respective ways – was, that the Netherlands surrendered to an ever more fundamental extent to other states, France in particular, which it fundamentally mistrusted. In comparison to the majority view, this reasoning started from the premise that a unified Europe would still be composed of individual nation states, driven by individual national interests. In essence, they rejected the notion of the development of one European polity which encompassed the various national polities.

The political majority, however, remained fundamentally unsusceptible to such forms of counter reasoning. Throughout the period 1964-1979, instrumental supranationalist considerations defined its thinking and actions in the process of European integration. Although it is hard to pin-point the origins of this persistent strategic consensus, the correspondence between instrumental internationalism – with which the Netherlands had a long history of experience – and the new concept of instrumental supranationalism remains striking. Ever since the seventeenth century the foreign policy of the Netherlands had been characterised by a belief that the country, for its own sake, needed to balance the differences in power between itself and bigger and stronger political powers in order to secure its vital interests. A trust in international legal arrangements in order to secure the national interests was characteristic of the Land of Grotius. Confronted with ideas for European integration, it can be observed that these historically developed foreign policy reflexes cropped up again; the process of European integration – which had since 1948 been viewed as a central goal of Dutch foreign policy – was taken in hand with the well-tried strategy that had for many years dominated Dutch foreign policy. The interpretation of the Dutch constitutional articles dealing with international treaty making concerning European unification was made a sacrosanct tenet in order for this strategy to be executed through far-reaching European agreements in which state sovereignty was yielded.

The one to one, and rather uncritical application of the traditional foreign policy strategy of the Netherlands to European integration, is indicative of the conceptual frivolity with which the Dutch political mainstream threw itself into the process. As has been pointed out already, its attitude in all this was based on considerations of national survival; a notion that relates paradoxically to the federal objective that it aimed for since in a European federation the political sovereign state of the Netherlands would *de jure* no longer exist.[490] Consequently, so it would turn out, the integration process could in the long run not

be captured in familiar nation-state notions such as foreign policy, international agreements, exchange of interests, big and small powers and the like. Supranationalisation implied that a whole new dimension would be added to both the national and the international political perspective of the Member States. A dimension, the implications of which were hard to survey or anticipate. Soon, however, clear signs would become visible.

Chapter 4
First Cracks in the Consensus 1979—1986

'The policy on Europe is self-evident. [...] The Dutch interest in the common market is so obvious that everything contributing to maintenance and strengthening of the EEC deserves our support in principle. [...] [Generally speaking] we can rely on our pro-community instinct. Nor is this a controversial matter in our domestic policy.'

Herman Posthumus Meyjes (1979)[491]

4.1 Introduction

As emphasised by the quotation of the Dutch Director General of European Affairs, Herman Posthumus Meyjes, the Dutch political elite and top officials entered the 1980s in an atmosphere of confidence with regard to the process of European integration. In the previous decade, two of the country's most dearest wishes with regard to the process of European integration had been fulfilled: accession of the UK and the institutionalisation of direct elections for the EP. Although doubts and criticism had grown among certain intellectuals and smaller political parties, by now, the conviction that going along with the process of European integration contributed to the economic and political well-being of the Netherlands, was solidly rooted with the Dutch political mainstream an considered as a matter of course.

This confidence found its reflection in the process of reform that the Dutch constitution went through in the early 1980s. In this process, the text was simplified by handing over a number of constitutional issues to the legislator (deconstitutionalisation).[492] Moreover, the wording of the constitution was modernised and adjusted to the

constitutional relations as they had developed over time. Where the word 'King' had in fact indicated 'the government', for instance, the latter term henceforth replaced the first.

A constitutional change that catches the eye most was the adding of a new first chapter that recorded a series of basic rights of the citizens of the Netherlands. Since 1945 the Netherlands had become a party to a series of international human rights agreements such as the Universal Declaration of Human Rights (UDHR, 1948) and the European Convention on Human Rights (ECHR, 1950).[493] The monistic constitutional culture of the Netherlands in which Articles 63 and 65 provided that those international treaty provisions directly protected Dutch citizens, had since the early post-war years guaranteed these basic rights. The reason of the government for adding a chapter with basic rights to the national constitution, despite the existence of international safeguards, was that it thought that: 'It is true that international and national law are in continuous interaction and mutually support each other, but have, nevertheless, a function of their own. It is our judgment that fusing them together should not be our aim.' It added that: 'national rights […] provide more specified guarantees, deemed of special importance in the country's own jurisdiction.'[494] These remarks reveal the introduction of an interesting nuance in the government's view of European integration. Whereas since 1953 the notion had prevailed that the process should be given ample room, in particular from a constitutional point of view, after three decades now a restriction to that thought was introduced in the sense that certain limits should be considered in order to protect specific national guarantees, needed within a particular national context. In this regard, it was a change in the message, propagated without much nuance for a long time, that progressive European integration would serve the Netherlands in all respects.

Examples of such specific guarantees that were explicitly recorded in the constitution of 1983 were the right of petition and the right of demonstration. Other fundamental human rights, already expressed in the ECHR, such as the right to life and the prohibition of torture, were *not* separately recorded in the Dutch constitution. It shows that the government viewed the international legal order as complementary to the legal order of the Netherlands but also – and more importantly – as a separate order that could (and should!) not come in place of the Dutch legal protection of specific basic rights. Considering the constitutional history of the Netherlands since the early 1950s this issue is of the highest importance. For the first time, after thirty years of deliberately intertwining the Dutch constitutional and the international and

European legal orders, such prudence in keeping the international and national legal orders separate was openly displayed by a Dutch government. After thirty years of constitutional openness, in other words, the Netherlands closed a little.

The constitutional chapter on foreign affairs as it had been designed in 1953 was also brought up for revision. Although the government had no intention of changing the purport of this chapter – the proposal of the government was primarily a cosmetic update – in the parliamentary debate running up to this constitutional reform, the constitution was subjected to a parliamentary re-interpretation, the political relevance of which can hardly be overestimated.[495]

This process of re-interpretation started when on 18 March 1980 a motion was introduced by D66, the CDA – a new party that was the result of a merger of KVP, CHU and ARP – and the VVD.[496] In the run up to this day, the first of these political parties – now captained by the outspoken advocate of a European federation, the former State Secretary Laurens Jan Brinkhorst – had worked hard to convince the government to explicitly lay down in the Dutch constitution the effects of the process of European integration for the national legal order. It argued that the Dutch constitution should 'make mention of the perspective of progressive European integration' and, more specifically, 'that the Netherlands had become part of a wider, European legal order'.[497] Moreover, D'66 suggested that it should be established, that in case of doubt, the provisions of the Dutch constitution should be interpreted as to advance the process of European integration.[498]

This suggestion to redefine the meaning of the Dutch constitution in favour of ongoing European integration – a suggestion that confirmed the interpretation as it had developed since 1953, but which went also further – was daring. Even more unequivocally than in 1953, such a provision would turn the Dutch constitution into a vehicle for the political goal of creating a unified Europe, as pursued by a stable political majority in the Netherlands. If this proposal was adopted, the advocates of further European integration would benefit from it, since future discussions on the constitutionality of European Treaties would largely become superfluous.

When the government failed to come up with this proposal, Brinkhorst himself put pen to paper and drafted a parliamentary motion for which he had found support with prominent CDA and VVD representatives.[499] The reaction of the government was far from enthusiastic. The Van Agt government – a coalition of VVD and CDA, led by Dries van Agt (CDA) – judged it problematic to record such a general note on the interpretation of the constitution and the

provisions on foreign affairs: 'We would not be able to subscribe to such a conclusion in its generality.'[500] It warned parliament about too general a formulation of this constitutional fiat for the process of European integration.[501] 'Should in case of doubt, in all possible circumstances, the Constitution be explained in favour of the European integration process?', the Minister of Internal Affairs, Hans Wiegel (VVD), wondered.[502]

In this context it should be observed that since 1953 the situation had changed to such an extent that (sections of) the Dutch parliament were willing to go further than the government thought sensible in yielding their power of control of every step towards European integration. In an attempt to tone down the motion, Wiegel argued in favour of the insertion of the word 'unnecessarily' which would change its formulation into: 'that in case of doubt, provisions of the Constitution should be explained in such a way that the European integration process is not *unnecessarily* [italics added] hindered by it.'[503] This small revision, would give the government and parliament more room for appraisal on a case by case basis of various political interests, instead of letting progressive European integration prevail as a matter of course.

Indeed, the suggestion effectively signified a fundamental modification in the intent of the motion. The phrasing as proposed by Wiegel, implied that it should still be established by government and parliament on a case by case basis, whether the process of European integration was necessarily or unnecessarily hindered. Such a case by case judgement would take more time than the categorical procedure that Brinkhorst proposed and was more complex, considering the intangible, multi-interpretable nature of both qualifications.[504] On the other hand, Wiegel's suggestion would contribute to the parliamentary grip on the process of European integration. Indicative for the trust that the initiators of the motion put in the positive outcomes of the integration process and the blind-eye they tended to turn to possible unexpected turns in the process that might prove their expectations wrong, the initiators of the motion refused to go along with this editorial change.

On 24 April 1980 CDA, VVD and D66, without much further debate, adopted the wording 'that in case of doubt, provisions of the Constitution should be explained in such a way that the European integration process is not hindered by it' by a vote by 'sitting and standing', i.e. the Dutch equivalent of a show of hands.[505] Although a considerable number of political parties declared themselves against its adoption – CPN, SGP, GPV, PSP, and also the PvdA – a standard

interpretation of the Dutch constitution in favour of progressive European integration was decided on by the numerical predominance of the supporters of its initiators. Departing from the notion of Dutch constitutional openness *vis-à-vis* international treaty making, as introduced in 1953 and which by now had reached an almost sacrosanct status, the three succeeded in stretching it further. The Brinkhorst motion offered an answer to all complex constitutional questions that might be raised in the course of further European integration. As far as the exact relation between European treaties and the Dutch constitution could after 1953 still have functioned as a procedural brake in the process, this barrier was levelled now: the political advocates of progressive integration could henceforth invoke the Brinkhorst motion as the argument to approve any new step despite its constitutional effects for the Netherlands.[506]

The adoption of the motion is surprising when seen in relation to the constitutional reform that was proposed and carried in the Netherlands in the early 1980s. On the one hand, the introduction of a new chapter recording the basic rights of Dutch citizens was suggested in order to emphasise a series of specific guarantees within the national context, whereas, on the other hand, a motion was adopted in parliament which reconfirmed *and* fortified the old doctrine of the precedence of a European legal order regardless of the situation. It is an indication of a latent ambiguousness, present but not explicitly noticed in the political domain, with regard to the fruits and costs of European integration. Clearly, still a large political majority believed in the use and necessity of progressive legal integration and supranationalisation, but at the same time the notion was made explicit that for certain guarantees citizens remained dependent on the national legal order.

The Brinkhorst motion was adopted in a year in which the prospects of the integration process were – to say the least – uncertain. The turn of the decennium had been marked by a revival of Cold War tensions,[507] a second oil crisis and a new economic recession with high unemployment rates hitting Europe in the early 1980s.[508] The economic depression made it meticulously clear that when it came to the crunch, the EEC Member States tended to slip into 'the national reflex' – i.e. they tended to return to national economic and political protectionism – instead of showing themselves willing and able to formulate a common reaction.[509] The 'We are simply asking to have our money back'-policy of the British conservative Prime Minister Margaret Thatcher (1979-1990) showed in unveiled terms that solidarity among the Member States of the EEC – a pillar on which the integration process rested – had its limits. In 1983, the French and American economists Michel Albert

and James Ball even concluded that from an internal market point of view it was more in line with reality to speak of the non-existing Europe – *'le non-Europe'* – than to applaud what had been achieved in the Community in economic policy.[510] The term 'euro sclerosis' – a word stemming from the 1970s as a reference to the disillusionment about the (economic) stagnation of the integration process – was ever more frequently used to describe the state of affairs in the process of European integration.[511]

The headstrong and obstructionist position assumed by one of the Nine European heads of state frustrated the Netherlands in particular, since the small country had hoped and counted on the UK accession to bring positive geo-political effects. Thatcher's demands confronted the Netherlands with the fact that within the European Communities the big powers still determined the course of affairs. As was to be expected of the Dutch political majority passionately in favour of progressive European integration, this reality was not explained – as is shown by political debates of the early 1980s – as a reason for calling the process to a halt, but, on the contrary, as an extra motivation for moving along. And new chances for moving along developed indeed.

Already in 1975 and 1977 Greece, Spain and Portugal respectively had submitted their requests for becoming Community members. The three countries were similar in that all of them experienced a process of political transition from a dictatorial regime into a democratic political order.[512] Entering the process of European integration as relatively poor countries in political transition, it was clear that the new Mediterranean Member States would economically benefit more from their membership than the European Communities as a whole. Geo-politically, however, including the states was considered convenient, for the Nine believed their accession would increase the power of the EEC *vis-à-vis* the Soviet empire which started to show important signs of weakening.[513] Moreover, another geographic widening of the integration process was held to benefit the credibility of the Community, as it confirmed the invitation of the 1957 preamble of the EEC Treaty for other peoples to share in the efforts and blessings of building a united Europe based on peace and liberty. After long years of negotiation on the exact arrangements, Greece entered the Communities in 1981. Spain and Portugal followed in 1986.

Apart from this geographical modification, the 1980s brought the issue of economic and political integration to the European agenda again. The first attempts for bringing about political integration dated back to the Fouchet-plans of the early 1960s. In 1970, following the Davignon report, the EEC members had agreed to devise their

foreign policy together.[514] Notwithstanding the symbolic and political relevance of this decision – it formalised the ambition of the Six to develop a common identity in the field of foreign policy – ten years later the conclusion could only be that still little had come about in terms of foreign policy integration. Diverging ambitions and interests had kept the Member States divided on how and to what extent a common view could be phrased in this policy area. But the desire for political integration was still unabatedly felt, as is shown by the various initiatives launched to this end during the first half of the 1980s and ultimately resulting in the signing of the Single European Act (SEA) in February 1986.

The parliamentary debates in the Netherlands on the accession of Greece, Spain and Portugal and the SEA confirm the picture of a Dutch political majority that had decided to proceed with supranational European integration without bothering too much about possible downsides or unintended consequences. As far as uncertainties and possible negative implications of the latest developments in European integration were touched on in the debate, they were still played down.

An important change with regard to previous periods, as in particular the section on the accession of Greece, Spain and Portugal will demonstrate, is that between 1979 and 1992 the familiar lines of arguments – i.e. the arguments of economic and political necessity and of policy consistency – no longer sufficed. Increasing heterogeneity, combined with the ever further-reaching character of the European arrangements and the persisting inclination of the European Member States to let their own interests prevail, slowly awakened an awareness in sections of parliament and Dutch society at large that the positive outcome of supranationalisation could not simply be counted on. The complexity of the European integration process as it started to reveal itself in the 1980s and the doubts and questions it brought about, required new arguments and rhetorical strategies in order to be reasoned away. It can be interpreted as an early sign that the majority consensus that progressive European integration would most certainly contribute to the well-being of the Netherlands, started to get under pressure.

4.2 Dealing with Aliens: Expanding the EEC to Southern Europe

The Treaty on the accession of Greece to the European Economic Community and the European Atomic Energy Community (28 May 1979) and its sequel on Spain and Portugal (12 June 1985) were similar

in design and wording.[515] The preambles of both Treaties started with a reference to the motive underlying the process of European integration as it had been laid down in the preamble of the Treaties of Rome: the determination of the Member States to 'in the spirit of those Treaties […] construct an ever closer union among the peoples of Europe.'[516] Thus, the ultimate objective of uniting the various European peoples – and not only the heads of state and governments – in a European Union was reconfirmed. As far as the legality of a possible entry of the three countries into both communities was concerned, articles 237 of the EEC Treaty and 205 of the Euratom Treaty were referred to. These identical articles stated explicitly that 'any European state may apply to become a member of the Community […].' Keeping all options open for the future, the term 'European' was in these provisions still not further specified or delimited.

The position of the government

In the Netherlands, the first Van Agt cabinet (1977-1981) approved of the accession of Greece. The agreement on Spain and Portugal was signed by the CDA-VVD administration that succeeded it and which was led by the Christian-Democrat, Ruud Lubbers (1982-1986). Both treaties were presented to parliament to be approved by a simple parliamentary majority in accordance with Article 60, subsection 2 (Greece) respectively – in its renumbered, post-1983 version – Article 91, subsection 1 (Spain and Portugal) of the Dutch constitution.[517] Similar to the previous expansions of the European Communities, the government did not spend any extra word on the relation between both accessions and the Dutch constitution; a fact that neither the Dutch parliament nor the Dutch Council of State, for that matter, objected against.[518] It again underlines that the Dutch constitutional procedures with respect to European treaty making, as they had been designed in 1953 and reconfirmed and stretched further in 1983, had become the rule to the extent that they were not questioned.

Similar to arguments presented in favour of the previous accession, in both explanatory memoranda a first line of argument dealt with the economic and geo-political benefits of accession of the new members. In particular with regard to Spain – to Greece and Portugal to a lesser extent – the potential of a new market was praised. The highly protected Spanish market would open up within an EEC context; a development expected to lead to important new sales potentials in the Dutch fields of trade, industry, fishery and agriculture.[519] With regard to Spain and Portugal, the government claimed in particular that accession was needed to guarantee long term stability on the Iberian Peninsula;

a thing that was beneficial for the stability, and therefore also for the economic prosperity of the European Communities as a whole.[520]

Another line of argument – again the government followed the pattern of the previous round of accession – focused on policy consistency. Once more this line of thought was fleshed out in two ways. The first focused on the European ideal and loyalties stemming from the Rome Treaties. The second concentrated on consistency in the Dutch way of dealing with the integration process. With regard to the first category, the government kept close to the wording in the original texts of the accession treaties. In the explanatory memorandum it argued that 'a positive view' *vis-à-vis* the requests for accession befitted:

> 'the political objective in the preamble of the EEC treaty in which the Member States expressed their determination "to lay the foundations of an ever closer union among the peoples of Europe […] by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts."'[521]

With these words, the pact between the Netherlands on the one hand and the European Communities on the other, going back to 1957, was emphasised and, most importantly, the accession of new Member States was presented as the mere fulfilment of this old promise. Via a reference to the association agreement between the European Communities and Greece, concluded in 1961, the promise-is-debt argument gathered even more weight. Article 72 of that association agreement, the government pointed out, had explicitly mentioned the prospect of full accession to the Communities.[522] It implied that agreeing to the accession – now that this country indicated that it desired to commit itself to the *acquis communautaire* – was the mere consequence of this old agreement.

In addition, the second variant of the policy consistency argument in which the 'Dutch way' of dealing with Europe was referred to, was spun out. In line with the Dutch foreign policy tradition of internationally propagating peace and democratic stability through the rule of law, the accession of the candidate members was praised as highly important for removing the political isolation these countries had found themselves in as a consequence of the political transition they experienced. More specifically in line with the Dutch policy on European integration in the years before, it was called to memory that when the Six had agreed on the accession of Denmark, Ireland and the United Kingdom in 1972, the Dutch government had then stated that:

> 'It [the government] does not necessarily [see] the present increase in the number of members as the last. There are other neighbouring countries after all, whose accession, at the present moment not to be foreseen, could become an issue. The democratic character of potential new candidates for accession will be decisive when judging their application.'[523]

Now that new democracies presented themselves for membership it would be no more than consistent, the government claimed, to act in line with this way of reasoning. Thus, the option for future developments, which had explicitly been kept open in the previous round of accession, was now effectively deployed by the Dutch government. Moreover, it was emphasised that in earlier years an open attitude towards new members had also been at the root of the Dutch support for a Community with a fundamentally open character.[524] Rejection of the accession therefore 'would be completely against the fundamental Dutch views on European integration.'[525] In the case of Spain and Portugal the comment sufficed that entry of these countries to the European Communities underlined the Dutch view of the Communities as being open in principle.

In both types of policy consistency-arguments the Dutch government created a rhetorical link between the political decision on approval of accession of the new Member States and older decisions in favour of progressive European integration. At the root of these associations was a linear understanding of the process of European integration, the future of which had been decided on in 1957 and 1972 and which should develop accordingly. Also the Dutch political attitude towards this process was presented as a constant, not bound by time and changing circumstances. The basis for such a linear presentation was found in historical treaties and legislation. The arguments illustrate how a political fiction of consensus on European Treaties and legislation originating from these Treaties, were deployed to construct a reality in which the Dutch political community was said to be bound – both legally and morally – to agree to a new step in the process. New, successive steps in the integration process became justifiable as soon as the text of an earlier agreement left room for or advised such steps and, subsequently, these steps were justified on the basis of these earlier agreements; another classic example of what Perelman has called an argument of succession.[526]

The self-starting dynamics of the ongoing integration process, based on what was presented as a legal obligation, could in practice be easily called a halt to by the EEC Member States. A clear, later

illustration is the question of Turkish accession to the European Union that, despite association via the Ankara Agreement (1963) and its additional protocol (1970), is still obstructed by the political will of the EU Member States. Following the logic of agreements of the Dutch government in the Greek case, Turkey – internationally acknowledged as a democratic country – should have been offered full membership status not too long after its application in 1987. But until today (2012), both in the Netherlands and on the Community level, political objections regarding the country's human rights policy are considered more important than the fundamentally open character of the EU to democratic candidate members. This observation adds relevance to the question what the 'ever closer union' formula in the 1957 preamble actually required from the Member States in terms of political and legal obligations. Were, in the end, political preferences of the Member States in favour or against accession not of greater importance than some paper agreements on an ever closer union?

What the Greek, Spanish and Portuguese cases show, is that when a political preference in favour of accession existed, quasi-logical arguments for its approval could be found in these agreements. Indeed, these agreements might even be presented as a legal obligation to do so. In the Dutch explanatory memoranda on Greek, Spanish and Portuguese accession, for instance, the 'ever closer union'-concept – in fact not a clear concept at all– was applied as being self-evident. Fundamental questions such as whether there was a limit to the number of countries that could join and what competences the union would ultimately have, were disregarded. The same holds true for the fundamental Dutch views on European integration. In the explanatory memoranda these 'fundamental views' are specified as no more than encompassing a fundamental preference for an 'open' community – a rather abstract and multi-interpretable notion. The government, however, used it as a *topos* – a commonplace – to convince parliament that admission of the three candidate members represented an old, well-established consensus within the Dutch political community that suited the Dutch identity of the polity. It is an indication that the government reckoned on finding consensus in parliament on this issue.

Considering the composition of the Dutch parliament at the time of both approval debates, this political assessment is not to be wondered at. Both the Van Agt and Lubbers I government consisted of members of the CDA and the VVD. Being the product of a merger of the three pro-European Christian parties of the Dutch post-war political spectrum, the former held a view generally in favour of progressive European integration. The parliamentary section of the VVD – since

the start of the process consistently characterised by a strong pro-integration camp – could also be counted on. Together these parties held, under the respective governments, 51,3% and 52,7% of the seats in the Dutch Lower House.[527] Adding to this majority the PvdA and D66 – both hitherto generally in favour of the widening of the European Communities – a majority in parliament seemed within easy reach.

The continuing existence of a stable majority in parliament in favour of further, broader and deeper integration did not match the development of a critical current in the Dutch public intellectual debate. Having observed that the European Member States in the early 1980s remained divided on political integration, the intellectual debate on European integration in the Netherlands kept concentrating on the failure of the European leaders to bring about such an integration. Well-known in the Netherlands in the 1970s and '80s were the commentaries in the Dutch newspaper NRC *Handelsblad* in which the columnist Jerôme Heldring systematically emphasised the persistence of the nation state.[528]

Difficulties encountered in the field of political practice concerning Europe, gave rise to – what has been called – 'euroscepticism' or 'eurosclerosis'; the rise of scepticism in the wider debate on European integration in the Netherlands and the increase of doubts whether the process was really feasible and desirable. In 1977, the Dutch Social Economic Council had already published a report on the economic and political difficulties to be expected from the accession of Greece, Spain and Portugal; a publication that the Dutch Council of State explicitly asked attention for in its respective recommendations to the government.[529] In the 1980s, the rise of euroscepticism led the D66 MP Laurens Jan Brinkhorst – an ardent advocate of the supranational ideal himself – to conclude that in the Netherlands 'Only a few ever warmed to the idea of a policy with an identity of its own. For many it [Europe] is only a geographical notion. […] We simply do not see European unity with the emotions of someone who gets a new country of adoption.'[530]

This is a most striking remark, coming from the man who in the same year chose the forward flight by presenting a motion to parliament that subjected the interpretation of the Dutch constitution to the political objective of progressive European integration. It indicates that although it was noted on the political level that the support in Dutch society for the creation of a European polity – as far as it had existed in earlier years[531]– showed signs of foundering, the political elite did not feel the need to adjust its own agenda. On the contrary, the growing resistance might have motivated Brinkhorst to take his move in order

to secure the political goal of progressive European integration his party had. More generally it seems that although the public opinion on Europe at the time of the accession of new members might have become more sceptic, this was not necessarily an impediment for the approval in parliament of the accession of the new candidate members.

Debate in parliament

From the late 1970s onwards, scattered throughout parliamentary debates on foreign policy and European affairs, arguments in favour *and* against the accession of the three Mediterranean states can be found. It shows that in the Dutch parliament these accessions were not regarded as unequivocally positive as the accession of the United Kingdom, Ireland and Denmark had been in 1973. In 1978, for instance, the liberal VVD senator Hendrik Jan Louwes warned of an all too hasty and ill-considered admission. Since the accession of Denmark, Ireland and the UK, the EEC had blossomed into a community of 320 million inhabitants; an enlargement of 60% in comparison to the Europe of the Six. A new expansion at a moment when the integration process on an institutional level was still far from completed, Louwes feared, would only undermine the supranational objective.[532] The deprived economic state of the candidate Member States was considered an extra difficulty. Louwes thus negatively linked the objective of widening of the Communities to the process of deepening European integration; the first being presented as not necessarily contributing to, but hampering the latter. In the previous round of accessions, although doubts on the conditional relation had already existed, widening the European Communities had in broad circles been presented as a necessary condition for institutional deepening. Disappointment in what the previous round of accession had yielded in this regard, most probably contributed to the switch in perspective.

Notwithstanding the doubts cast on the new accessions, still numerous MPs from the VVD, CDA, PvdA and D66 argued in their favour. A range of familiar arguments passed in review in the Lower House, of which the one on policy consistency was the most prominent. The Christian-democrat senator Wim Vergeer, for example, reasoned that the Netherlands should approve steps that were in line with what had been laid down in the Rome treaties in 1957. He considered an open attitude to newcomers in line with both the EEC Treaty and the traditional Dutch emphasis on the open character of the European Communities. Many MPs of the four parties mentioned, stressed that the EEC was not, and should not be a closed form of cooperation. The distinction between an open and closed community

as it was applied here, had the same function as the distinction present in the previous round of accessions. The political mainstream felt comfortable with the idea of 'openness', which in their perception implied freedom, a well-functioning European market, and balancing the power of the Member States, whereas 'closed' – i.e. not open to new members – was associated with being locked up in a protectionist EEC in which the great powers called the tune. Such an exclusiveness, in other words, went counter to everything the Dutch, with their foreign policy, had worked for in the past. The conceptual difficulty of pursuing an open EEC – of course the question could be raised how and to what extent the building of an ever closer community related to the ideal of openness – was not given any thought.

In the policy consistency-line of argument, economic or political disadvantages that might follow from the accessions were of minor importance; something that contributed to the force of that argument since many in parliament were not very convinced that economic benefits would directly follow from accession of the three deprived Mediterranean states. Only the VVD specifically mentioned the economic advantages of Spanish accession for the Dutch economy as a reason for approving the entry.[533] Compared to the case of the accession of Denmark, Ireland and the UK this was quite a difference, since in that discussion the expected economic and political advantages had bound many MPs in their positive evaluation.

A new argumentative line, hitherto not this explicitly heard, was that the admission of Greece, Spain and Portugal was crucial for the development of democracy in these countries.[534] With regard to Greece, the VVD, CDA, the PvdA and D66 expressed the conviction that accession of Greece was in line with the principle laid down in the EEC and Euratom treaties, that new democracies, interested in accession, should be given that opportunity.[535] With regard to the accession of Spain and Portugal, a central argument in favour was found in the missionary consideration that accession was needed for these countries to get out of their political isolation.[536] The presentation of the accession as a means of promoting democratisation throughout the continent offered its political advocates a new, strong rhetorical trump in pleading in favour of progressive European integration. The notion of assisting countries that experienced a democratic transition suited an old political consensus of the role of the Dutch in the wider world: Grotius' descendants as loyal contributors to the coming about of an international legal order. As has been observed earlier, the small country derived elements of its sense of self from this notion and, more importantly, it was accepted in broad political circles as a fact

that a strong international legal order was a necessary safeguard for the economic and political well-being of the state of the Netherlands. Not surprisingly, therefore, this new rationale for approving accession found assent with large parts of parliament. Even the usually critical PPR agreed with – what could be explained even – as a socialist idea of letting deprived countries share in the political and economic well-being of the European Communities.[537]

By embracing the democratisation argument, the Dutch political mainstream stretched further the 'objective' that the Netherlands strived after by means of European integration. Whereas during the first post war years the notions of *Nie Wieder Krieg* and economic recovery had functioned as primary arguments in political pleas in favour of European integration and the 1960s and 1970s had added free trade and reaching a political balance of power as important rationales, the early 1980s brought to the fore the motivation of promoting democracy internationally. The growing range of arguments implicitly adds to our understanding of the identity the Dutch polity. The various Dutch rationales for progressive European integration reveal the priorities of the Dutch political majority in pursuing European unity: striving for national security, economic well-being and international political stability. Priorities, in other words, deeply rooted in the country's political culture. And priorities, it should be noted, that reveal the 'nationalist' motives with which this country had embarked on the internationalist, later supranationalist path.

Political parties like the CPN, PSP and the Protestant-conservatives had never endorsed European integration as the right tool to safeguard the economic and political well-being of the Netherlands. They also rejected the various arguments that were brought forward in favour of accession of the three Mediterranean states. The CPN opposed the democratisation argument by taking the stance that the European Communities should not interfere then in the internal political development of Greece, Spain and Portugal. It shows that this party still viewed the process of European integration as a foreign affairs undertaking, that should not meddle with the national spheres of influences of the Member States. The PSP had no belief in the positive effects of opening up the Communities for three new members, but claimed on the contrary, that the accession of the new members would only enhance the block-like character of the Communities *vis-à-vis* the outside world. The GPV, RPF and SGP envisioned progressive European integration rather as a threat to the well-being of the Netherlands than a safeguard. Their most pressing concerns focused on all kinds of hardly

foreseeable policy problems that the entry of the new members might lead to.[538]

What these parties had in common was that instead of emphasising the bond or connection between the Nine of the EEC and the candidate members, they underlined their mutual differences. The rhetorical function of their attacks was to point out the incompatibility of diverging interests in an ever more diverse EEC. The adversaries of wider and deeper European integration broached a delicate issue here. Emphasising the difference between the candidate members and the Nine ran counter to the thought of 'an ever closer union' in which the dissimilarities of the Member States were supposed to be pushed, increasingly in time, into the background in favour of the common objective. The advocates of accession of Greece, Spain and Portugal, however, could not turn their heads in denial. To them it was clear that with the accession of the candidate members the European Community accepted, in certain regards, alien elements and – maybe most importantly – differing in many respects from the Netherlands. The absence of any reference to a connection on the level of identity between the Netherlands and the candidates – a prominent argument in the defence of the government of the UK accession – is an important sign. But also more explicitly, the lack of any connection in terms of history, culture and identity was expressed. Even the Minister of Finance in the Den Uyl cabinet, Fons van der Stee (KVP), had remarked in 1976 already that: 'If it comes to the ideal of the United States of Europe, then I say (…) Greece does not belong there. With all respect and esteem, this country's economy and culture do not go with the north-western European maritime culture that we know.'[539] More in general, the minutes of the meetings in the Dutch parliament show that Greece, for instance, was – in comparison to the older members – perceived to be behind in the fields of political and economic stability.[540] In the Dutch parliamentary and diplomatic debates it was questioned how these arrears would affect the (in)ability of the country to meet the financial and political obligations following from EEC membership:

> '[Charles] Rutten [the then Permanent Representative of the Netherlands with the EEC] was very much against Greek accession. He said […] you admit countries that, with regard to the internal market, are not able to take on all kinds of obligations, let alone comply with them. So […] we should not do that.'[541]

In short, it was feared that accession of the country might interfere with the existing political and economic standards and values shared by the Nine; an alliance that hitherto consisted – for the greater part – of relatively wealthy countries situated roughly, apart from Italy, in the northwest of the continent. Comments like the one above speak volumes on how Greece was seen in relation to the Nine: as an alien element. Viewed in the light of the recent (2012), European wide, political commotion regarding the Greek-government debt crisis, the comment even gets more fascinating. Distrust of how the Greek authorities ruled their country and economy and discussions on how this related to the standards that the other European Member States upheld, turn out to be over thirty years old. This observation places the current, seemingly new debates on the place of Greece in the European integration process in a more historical light and shows that the relative economic stability in the EEC and Euro zone, in the 1990s and first years of the new millennium, was not at all self-evident. Besides, the comments confirm that the Dutch saw themselves as a part of a 'north-western European maritime culture' that they liked to see as the dominant culture within the European Communities. Conceptual difficulties such as, for instance, how France and Italy – not necessarily 'paragons' of this culture – suited this picture, were not brought up for debate. It once again confirms the uncritical attitude with which the Dutch political mainstream approached its own ideas on European integration.

In addition to the economic effects of Greek accession, the human rights policy of the country was viewed with suspicion. The Greek-Turkish conflict regarding Cyprus was a difficulty to be considered and, just like the Greek refusal to recognise Israel – a country with which the Community as a whole, and the Netherlands in particular maintained good relations – had to be diplomatically dealt with before Greece could join the EEC. Moreover, the country's policy on human rights was viewed with Argus' eyes. Two concrete issues that bothered various MPs in the Dutch parliament were the Greek practice of imprisoning conscientious objectors – a political hot-topic in the 1970s and 1980s – and the refusal of the country to recognise the individual right of petition before the European Commission on Human Rights in Strasbourg.[542] Especially in PvdA circles the human rights issues were a source of concern. This is illustrated by various comments in the parliamentary meetings on Greek accession, which explicitly called for a process of European integration, based on international solidarity and respect for human rights.[543] Referring to the *topos* that the Netherlands was the country *par excellence* – '*Nederland Gidsland*' [guiding

others on their ways] – to point out to Greece that it should revise its human rights policy before entering the EEC, the PvdA called on the government: 'The Netherlands are recognised and rated as a country standing up for civil rights. I hope the Government will not betray the trust the Greek conscientious objectors have put in the Netherlands.'[544]

The social-democrat party received support from the Protestant-conservative SGP. Their party-prominent, Henk van Rossum, pointed out that it would be inconsistent of the Netherlands to boast of its moral high ground and to condemn others for their human rights breaches, while it was now decided to permit such a country to do that by permitting access to the European Communities.[545] Typically, both MPs, despite their rather different political preferences, shared the opinion that the Netherlands should play a special part in the EEC when it came to standing firm and upholding human rights standards; a part that the Netherlands tended to claim when acting on the international stage since the late nineteenth century. It confirms the observation that, as far as the Dutch political elite agreed on the objective of European integration, it perceived it as a means to reaffirm the country's national foreign policy objectives.

Underlying the various comments regarding differences in the fields of economy, politics and human rights, was the anxiety that the accession of Greece might undermine the coherence and strength of the *acquis communautaire*; a development that could impede progressive European integration in general and the supranational route in particular. Interestingly, both the advocates and the opponents of supranationalisation alike, expected the accession to have a negative influence on further integration. There was, in other words, consensus that the accession of Greece signified the entering of a heterogeneous element into the relatively homogeneous European order created by endless rounds of negotiations. Both camps agreed that this accession might hamper further integration in particular on the political level.

The two camps, however, made an opposite assessment of the consequences. The Protestant-conservative antagonists of further integration, *liked* the Greek accession to function as a brake in the development of a European federation. As far as this would not spontaneously be the case, they tried to stimulate such a brake-function by operating strategically in the parliamentary debate. The GPV leader Bart Verbrugh held out the carrot of approval of the accession in exchange for rejection of the federal ideal by the Dutch government: 'In the European confederal structure, which is more or less existing now, my party acquiesces in the accession of Greece, not in a federation, however. The new, too heterogeneous element which Greece brings in,

would in those circumstances probably lead to making inroads upon our freedom.'[546] The comment stands out, firstly, because it shows that in the perspective of the GPV the European integration had by now progressed to such an extent that a confederal structure could be recognised. Secondly, it indicates how the striding along of the process of European integration brought the question of compatibility of economic and political integration to the fore. Ever since the start of the European integration, those who were the motor behind the process had held out the prospect of economic merging to be followed by political integration. But now that the Communities were about to become more heterogeneous as far as the political and economical culture of its members were concerned, political antagonists seized the rhetorical opportunity to point to the unfeasibility of political integration.

The relevance of the issue they broached was underlined by the concerns of *advocates* of further integration. Notwithstanding their position at the other end of the political spectrum, MPs promoting the accession also feared the 'watering-down' of European agreements that might follow from the accession.[547] In particular, they feared the hard-won first steps towards a common foreign policy and further political integration to suffer from Greek accession. In the debate, they aimed at *guarantees to safeguard* further political integration once Greece had been admitted. An example is the attempt of the D'66 MP Laurens Jan Brinkhorst to elicit a statement from the Dutch government on what Greek accession implied for the prospects of political integration: 'It would be unacceptable if the main political lines decided on by the Community, would not be accepted by Greece.'[548] Brinkhorst played for high stakes here. Implicit in his remark is the admission that, from a political perspective, the accession of Greece was more complex than the accessions of 1972. Instead of consequently lowering down his European ambitions, however, he raised the stakes by calling on the government to emphasise the absolute necessity of sticking to the plans for political integration, also when Greece would have become a member.

Through emphasising the political elements in the *acquis communautaire* signed by the new Member State, the advocates of further supranationalisation hoped to avert that Greek accession would result in the renunciation of their ideal of European political integration. This observation is of great significance. For the first time in the history of the process of European integration, the parliamentary advocates of progressive European integration of D'66, PvdA, CDA, and VVD showed that they clearly and explicitly realised that the ideal

of a homogeneous European order in which the members committed themselves to unequivocal policy lines might be hard to reconcile with the growing diversity that would follow from the accession of new members. But instead of concluding that the European ambitions should be adjusted, or withdrawing in conceptual deliberations on how to reconcile widening of the Communities with deepening, the political advocates of the accession kept a strong focus on realising the goal they had set a long time ago: developing a supranational, preferably federal, European unity. In Brinkhorst's remark the Dutch government was addressed as being responsible for emphasising the importance of Greek embracement of this objective in the negotiation process. No attention was paid to the fact that the Dutch government was now only one power among ten and could impossibly be a decisive factor in how Greece would interpret and deal with the European treaty framework once it had become a member. In fact, with the composition of the Communities getting more diverse, the relative importance of the Dutch say in the process would only decrease. This very fundamental matter, however, was not entered into. Instead the dogmatic Dutch approach of negotiating pro-actively in order to steer the agreements in the 'right' direction was promoted.

The same argumentation patterns can be observed in the debates on the accession of the other two Mediterranean states. With the accession of Spain and Portugal, a few years after Greece, heterogeneity was to grow further. In parliament, this was widely acknowledged. Similar to the parliamentary debate on Greek accession, the perceived 'otherness' of these southern countries led to worries on how typical national (party) political preferences and values could be safeguarded in an ever more diverse European framework. Again the PvdA asked for explicit guarantees that conscientious objectors were dealt with according to European human rights standards.[549] The advocates of progressive European integration again feared the accession to result in the watering-down of the integration process.[550] Once again, they urged the government to insist on the full commitment of the new members to common European viewpoints, as becomes clear from the comment of the liberal MP Frans Weisglas on the required Spanish recognition of the state of Israel before Spain would enter the EEC: 'Spain should realise that in the political domain something should be given after all, in exchange for the joys that possibly come with EEC-membership.'[551]

The remark that, in the end, Spain was supposed to make sacrifices in exchange for the benefits accompanying EEC membership is interesting since it raises the question of whether such a trade-off had also applied for the Netherlands. What had this country sacrificed

in exchange for a place within the European Communities? Since 1948 the traditional understanding of political and legal state sovereignty had been eroded. The successive treaties establishing the ESCS, EDC, EEC, the Merger and the installation of a European Court of Justice, a European Council and Commission and a directly elected European Parliament had tied the Netherlands in all kinds of ways, not only to the other European members, but also to a new governmental level that had power of its own. Remarkably, however, the political majority in the Netherlands did not seem to associate this development with having become unfree, or unpleasantly constrained. On the contrary, until then a large part of the political majority seemed to approach European integration as a means for the Netherlands to become more free and to dispose itself of all kinds of constraints that came with being a small country surrounded by big powers. What the Netherlands, in other words, lacked in terms of *de facto* sovereignty as a consequence of its geo-political characteristics, was tried to be made up for by binding the sovereignty of other states through European agreements. The fact that, in return, the Netherlands had to yield state sovereignty that it had *de jure* possessed, was neither perceived – nor felt – as a loss by this majority.

The perception of European integration as a win-win strategy did not find believers among the Protestant-conservative minority in the Netherlands. Their strong attachment to state sovereignty stemmed from their view that the sovereign state had the duty of guarding minority rights. These had been hard-won in the previous century and safeguarded by the Dutch constitution in provisions such as Article 23, which guaranteed this minority the equal treatment and financing of public and denominational education.[552] Progressive European integration and allowing in new, and worse, Catholic members were experienced by this minority as a potential threat to their group identity and sovereignty. This is illustrated by Meindert Leerling, leader of the Protestant-conservative RPF, who called for a guarantee of the government that the predominantly Catholic countries were fully to respect the right of freedom of religion: '[…] reformational and evangelical Christians in those countries form, in terms of percentage, a small minority. Do these Christians also very concretely have the same social prospects as Roman Catholics?'[553]

Once again – similar to the Greek case – growing diversity in the Community was an argument for those in parliament who rejected progressive European integration, to emphasise their particular rejection of *political* integration. Gert Schutte (GPV) called on the government to express clearly that 'certainly with the accession of

Spain and Portugal […] the old federative idea of the fifties [has] lost every real meaning.'[554] Also the radically right *Centrum-Democraten* (Central Democrats, henceforth CD), established in 1984, led by Hans Janmaat and opposing the process of European integration, thought the weakening of the political and economic coherence within the European Communities to be the logical consequence of expansion.[555] By going into the history of rivalry between the Netherlands and Spain, Henk van Rossum (SGP) accounted for the SGP rejection of any further political integration after Spain had acceded. With a great sense of pathos, Van Rossum contended that the 'Eighty Years' War' (1586-1648) between the Netherlands and Spain had left deep marks in the Dutch nation.[556] As he saw it, Spain's accession into the European Communities meant that the Netherlands would be unified in the European framework with a third former tyrant; the other two being France and Germany. Whereas the SGP did not see much harm in economic cooperation with Spain, and was for that reason willing to allow this country to accede to the European market, the party argued that the political sovereignty of the Netherlands – historically successively regained from Spain, France and Germany – should be cherished.

Though completely out of line with the majority opinion in parliament and politically not effective at the time, these remarks indicate that within the Dutch political community a minority existed that actually thought this way. And this minority did not plan to rest until its message had been heard.

From defence towards consensus

Opposing this minority, however, a parliamentary majority in favour of progressive economic and political European integration stuck to their guns and did not want the concerns about the growing heterogeneity and its consequences to get in the way of the accession of either Greece, or Spain and Portugal. Nor did this majority like these accessions to get in the way of their ideal of further political integration.

For that reason, after all concerns had been uttered, the contributions of many MPs, supported by the members of the government, were aimed at pointing out why the accessions should be approved anyway. To that end, negative consequences that might result from the accessions were ironed out and the differences between the Netherlands on the one hand, and the candidate Member States on the other, were reduced. This, however, turned out not to be an easy task. Whereas the approval of the UK accession had been easy to defend, also from an identity point of view – a sense of mental, cultural

and economic kinship with the UK was widely felt in parliament – the Dutch MPs had to reach deep in their rhetorical pockets in order to make a reasonable case for Dutch-Greek, -Spanish and -Portuguese connectedness as a reason to endorse the accession of these countries.

This is shown by their pathos rich pleas. In reaction to remarks on the 'otherness' of Greece, Ans van der Werf-Terpstra (CDA), for instance, a Catholic senator from the province of Friesland contended that without a doubt Greece deserved a place in the process of integration since it was – and had always been – an essential part of European civilisation, or even the womb out of which it had grown:

> 'Once I read in a travel book: "Europe ends in Greece with jagged frayed foothills", but in my memory the road runs exactly the other way round; Greece lay at the beginning of Europe. It is there still. Greece the cradle of our civilisation.'[557]

She added that instead of mistrusting the country, pride of a possible Greek partnership was a more proper attitude to be assumed by the Nine, and the Netherlands in particular:

> '[…] that Greece, battle-weary by age-long wars, always risen from its ashes […] in 1975 put in an official application for accession […] not as a goal in itself, but to go with us one common way, to realise ideals, to promote interests and to work hard for a democratic, just, international economic order. That Greece, I think, should have had from the Netherlands a somewhat more enthusiastic welcome as a partner indeed.'[558]

By referring to Greece as a partner of the Netherlands in reaching a democratic and just international order, any dissimilarities between the policy preferences of both countries were rhetorically shoved into the background. It must be noted though, that Van der Werf-Terpstra spoke in terms of an 'international *economic* [italics added] order'; from a rhetorical perspective a smart focus since a discussion on essential differences between the countries was less relevant in case 'only' integration in the market sector was concerned. The message rendered by Van der Werf-Terpstra on the solidarity and connection between Greece and the Netherlands was supported by the liberal senator Jan Baas who emphasised that 'the rich history of Greece is also embedded in our culture.'[559]

Wim Meijer, MP for the PvdA, showed a similar conviction with regard to Spain and Portugal by simply stating that these states belonged

to Western-Europe.[560] Against the argument of historic rivalry between Spain and the Netherlands, that had been brought up by Van Rossum (SGP), the CDA representative Joost van Iersel objected with a different interpretation of that time in history. Instead of concentrating on the elements that had divided these countries, Van Iersel chose to concentrate on historic episodes that marked a connection between them. Both the Netherlands and Spain, Van Iersel pointed out, had experienced their golden age, more or less at the same time, followed by economic decline and the loss of cultural influence.[561] Although this remark lacked any relevance with regard to the issue of accession, Van Iersel smartly employed it as a stepping stone to a historical narrative, that underlined the historical bond between the Netherlands and countries of the Iberian Peninsula:

> 'In the days of the Eighty Years' War, Spain and Portugal together formed a double-monarchy. When as a result trade with Lisbon declined, Dutch merchants increasingly began to sail the seas of the world in search of spices and raw materials. So because of Spain and Portugal's doing, the foundation was laid for the illustrious role of the United East India Company, which for ages […] played an important role in providing prosperity for our country.'[562]

The argument was in fact, that the Netherlands was indebted to Spain and Portugal for their contribution – albeit indirectly – to Dutch culture and wealth.

Van Iersel's fellow party member, Ans van der Werf-Terpstra chose a similar line of reasoning in the Senate. In reference to the Portuguese nobleman in Spanish service, who was responsible for the construction of the dykes in Friesland in the sixteenth century, she pointed out that she had been raised with gratitude to the Spanish. Of the statue, put up in Harlingen – the birthplace of Van der Werf-Terpstra – in honour of Caspar di Robles, she claimed to have lively memories: 'During many festivities in our town I joined dances while the castanets clattered and this Portuguese Spaniard focused his watchful eye on the four points of the compass to keep us from disasters.'[563] To this anecdote she added subtly that 'the history of mutual solidarity does not begin just now.' This in order to subsequently propagate her political view that 'Not in the narrow-minded attitude of the "big brother" we want to welcome Spain and Portugal, but in the way of cordial friendship, trust and sympathy.'[564]

What these various historical arguments have in common is that all were couched in the form of a narrative; a rhetorical instrument in which a certain interpretation of the past is proposed in order to read a certain situation in the present and to legitimise a certain action.[565] The narratives constructed here point to a history in which the Netherlands and the acceding countries were positively connected. By pointing to the common history, the parliamentary advocates of the accessions tried to reduce the differences between the Netherlands and the acceding countries as they were experienced in the present. This in an attempt to convince the critics that approval of the accession was the only right thing to do. To an outsider, the overplayed narratives – in particular those of Ans van der Werf-Terpstra – come across as farfetched and somewhat artificial.[566] The mobilisation of heavier rhetorical artillery can be interpreted as an indication that the advocates of European unification realised that, this time, political consensus on the accession lacked the casualness of 1972 and more was needed to hold a political majority on board.

Strikingly absent in these narratives are clear-cut ideas on how to practically overcome any difficulties and discrepancies in the present between how a political majority in the Netherlands envisioned the continuation of the process of European integration and what the effects of the accession of the new members would be. These were not easy to explain away. The strategy of the Van Agt and Lubbers governments was to acknowledge the difficulties foreseen, but to point out at the same time that these were to be solved in the course of further integration. Earlier cabinets had demonstrated its effectiveness. In order to allay existing worries on the future of foreign policy- and further political integration after Greek accession, the Minister of Foreign Affairs Chris Van der Klaauw (VVD), for instance, emphasised that there had been talks with the Greek delegation regarding political cooperation and integration. However, procedural technicalities and arguments should be dealt with after the joining of Greece was a fact; before that, only the accession to the official community Treaties – of which the EPC was not a part yet – was the issue at stake.[567] On the accession of Spain and Portugal as well, the government recognised that practical difficulties were manifold and would need to be discussed. Again, however, it was advised to shelve these questions for the time being and to decide on the accession on the basis of more fundamental ideals and principles:

> 'Also for this cabinet the dominant fact remains, that the accession of Spain and Portugal has got everything to do with our notion of

> a free, democratic and economically cooperating Europe. […] Also against that notion must be balanced very practical and, viewed apart, true problems that come up when we infinitely have to debate fish, wine and olives.'[568]

This advice did not fall on deaf ears among the many advocates of further integration who did not intend to let any practical difficulties interfere with their desire to proceed in the process.

The conviction that regardless of all the difficulties the three candidates should accede, was again pressed home in the debate by claims that appealed to historical obligations and policy consistency; claims that also had been made at the outset of the debate. Applying the rhetorical technique of creating a liaison of succession, representatives of CDA and PvdA argued that the accession of Spain and Portugal was nothing more than fulfilling an old promise, laid down in the Treaties of Rome.[569] The CDA, with the words of the MP Joost van Iersel, even spoke of a 'historical imperative';[570] yet another firm rhetorical intervention that confirms that the accessions at stake were more problematic than those of the early '70s. In addition to the imperative alleged to stem from the basic European treaties (in fact one of many interpretations possible), also the imperative stemming from Dutch policy consistency was referred to again. It was emphasised once more that ever since the start of the early years of European integration, the Netherlands had declared itself in favour of widening and deepening of that process. Now the Netherlands had to put its money where its mouth was.[571] In line with earlier debates, this political principle and where it would lead to in the long run (did it, for instance, mean that in theory Northern African countries, or Turkey or Belarus could also join in the integration process?) was not critically questioned by the advocates of accession. For the time being, conceptual difficulties were left aside in order not to hamper or delay further integration. The sacrosanct character of the Dutch European policy as it had developed in the previous decennia before was further built on.

In the spring of 1980 the entry of Greece into the EEC was approved without a voting by call.[572] Only the PSP and Farmer Party – together holding two of 150 seats in the Lower House and two of the 75 seats in the Upper House – are registered to have voted against the accession. The autumn of 1985 brought the approval of Spanish and Portuguese accession.[573] This time, the CD and PSP voted against. The overwhelming majorities with which the three accessions were approved show that their political advocates had succeeded in keeping the ranks closed. In this regard the firm rhetorical interventions had

served their goal. Ironically, however, the success of the political advocates in forcing through the accessions, despite existing doubts on how the new members would relate to the European order, might also contribute to the undermining of their ultimate objective. With the approval of the accessions, the Europe of the Nine as it had hitherto existed, gave way to a more heterogeneous composition, with among them the relatively poor countries of Greece, Spain and Portugal.

The parliamentary debate on the second round of expansion of the European Communities clearly brings to light the fundamental paradox that the Dutch political community was faced with. A political majority favoured a concept of European integration in which homogeneity among the Member States could be upheld. In the eyes of the proponents the project could only become successful if it were to be deepened and expanded, but at the same time, they embraced further diversification. There was friction between, on the one hand, the wish of the Netherlands to internationalise, and, on the other hand, the wish to be part of a homogeneous order of governance whose decisions would benefit the interest of the country in a one-dimensional way. During the 1980s, the parliamentary advocates succeeded into convincing themselves that both objectives would eventually be served by the process of European integration.

Doubts – both in- and outside parliament – remained on whether these new members would be able to meet the EEC treaty obligations. Subdued in parliament for the time being, they did not disappear. This at a time when the European Communities were on the threshold of an enormous forward step in political integration. Leaping forward while in parliament and diplomatic circles and Dutch society at large, a gut feeling of doubt was swelling regarding the tenability of solidarity between the European members, were early indications of a dangerous cocktail in the making.

4.3 Silently Passing another Watershed: Adopting the SEA (1986)

Following the two expansions, on the European level of decision making the focus was shifted to the institutional strengthening of the European Communities. Since the start of the 1980s, an institutional change had hung over the market. Stemming from the conviction that gearing into one another of the foreign policies of the Member States was needed in order for the Community and its members to be able to deal adequately with the East-West confrontation, the German and Italian Foreign Ministers – Hans-Dietrich Genscher (1927-) and Emilio

Colombo (1920-) – had in 1981 developed a joint initiative to trigger a common foreign policy. This Genscher/Colombo plan had consisted of a declaration of intent, endorsed by the EEC Member States, committing them to move towards a European Union. It buttressed the role of the Council and the European Parliament in the area of foreign policy and advised greater use of the decision making principle of QMV – replacing decision making by unanimity – within the Council of ministers.[574]

After negotiations, the initiative eventually resulted in the signing of the Solemn Declaration on European Union (Stuttgart, June 1983) by the (then) ten Member States.[575] The Stuttgart Declaration stands out because it referred to the 'democratic peoples of Europe' as a basis for legitimising new steps in the process of European integration. Literally it was stated that 'the European idea, the results achieved in the fields of economic integration and political co-operation, and the need for new developments' corresponded to the wishes of those democratic peoples, 'for whom the European Parliament, elected by universal suffrage, is an indispensable means of expression.'[576] Thus, the introduction of direct elections of the EP was presented as an instrument through which the peoples of the European Member States had given their mandate for further integration. By implication, the national citizens of the Member States were referred to as the constituents of a European polity. Such rhetoric lifted the integration process from the sphere of an intergovernmental foreign policy undertaking to the level of supranational polity making.

Because of its declaratory character, the Stuttgart declaration needed no formal approval in the Member States and would in political practice not directly lead to breakthroughs in the integration process. Notwithstanding these restrictions, the document offered a perfect basis to build on for new proposals for further integration that could take the Stuttgart statements as a minimum basis of consensus.[577] Altiero Spinelli (1907-1986), a convinced European federalist of the first hour and MEP (1979-1983), was the first to initiate the development of the Stuttgart Declaration into a more firm political agreement. The 'Draft-Treaty Establishing the European Union' that he designed with like-minded spirits from the EP was adopted by an *ad hoc* committee of representatives of the Member State governments, established at the European Council of Fontainebleau (June 1984). The chairman of this committee, the Irish senator James Dooge (1922-2010), recommended negotiations on a new treaty. Parallel to this development, the then President of the European Commission, Jacques Delors (1925-), worked on what has become known as Lord Cockfield's White Paper, in which

a plan for the completion of the European internal market was laid down.[578]

Inspired by these various proposals for institutional change, it was proposed at the European Council of June 1985 in Milan to convene an Intergovernmental Conference (IGC) to be opened under the chairmanship of Luxemburg in September 1985. The IGC was officially closed under Dutch Chairmanship in The Hague on 28 February 1986, with the signing of the Single European Act (SEA) by Denmark, Greece and Italy following the example of the other nine Member States that had done so on 17 February.[579] Again the Netherlands had succeeded in contributing to the further development of the European order. The Dutch chairmanship had resulted in the first in-depth alteration of the Treaties of Rome, which, with the formal introduction in the *acquis communautaire* of foreign policy cooperation, the term 'Internal Market' and the proclamation of the objective of a European Union, potentially contributed significantly to the contours of a European political entity.

A central objective of the SEA was the deepening of European integration in order to 'complete' the European Common Market – a term that was replaced in the treaty by the term 'Internal Market'. Because of the apparent focus on economic integration, the fundamental importance of the treaty is easily underestimated. In the SEA many impulses to advance to a full-dress European Union – an, in all respects, supranational layer of European governance above the national level, to be reached in Maastricht in 1992 – were given. An important indication is the conceptual shift from a 'common market' to an 'internal market', in which the mutual borders would no longer exist. This change reveals a shift in perspective from a community *based* on the national territories of the Member States, to a community *encompassing* these territories. Another, more explicit sign is the preamble of the SEA, stating the objective of the Twelve to be the transformation of the European Communities into one European Union.[580] Thus, the treaty started where the Stuttgart Declaration (1983) had ended. Another indication of the great political relevance of the SEA was the focus on formally institutionalising a common foreign policy. Ever since 1957, the members of the European Communities had struggled with political integration, in which foreign policy had been a major obstacle. The preamble of the SEA made mention of the resolve of the Member States to implement the European Union on the basis of 'European co-operation […] in the sphere of foreign policy' and to invest the Union, to this end, 'with the necessary means of action.'[581] Title III of the Treaty was fully dedicated to this objective. Although a

common foreign policy was discussed in terms of co-operation and not in terms of integration – a clear sign that the Member States were wary to yield their sovereignty in this area – the fact that Europe would get a role – and instruments! – in foreign policy shows a step in the transition towards a European order that became ever more statelike.

It is particularly noteworthy that the SEA was the first official European treaty in which the process of European integration was explicitly stated to correspond to the will of the peoples of the Member States. In imitation of the Stuttgart Declaration, the SEA spoke of the 'European idea' consisting both of 'economic integration' and 'political co-operation', to 'correspond to the wishes of the democratic peoples of Europe, for whom the European Parliament, elected by universal suffrage, is an indispensable means of expression.'[582] Just like in the Stuttgart Declaration, the election of the EP by the nationals of the Member States was presented as to democratically legitimise new steps in the process of European integration. The remark can therefore be read as to suggest the existence of popular sovereignty on a European level, implying the existence of a European polity.

This brings us to the great historical relevance of the SEA. Officially proclaiming the realisation of a Union as the objective, including the field of foreign policy, the signing of the SEA marked a crucial transition in the process of European integration. Formally casting off the limits of economic sectorial integration, the path to political integration was officially opened. On the basis of the wishes of the national peoples – perceived to be cognizable through direct elections of the EP – the Twelve legitimised their step. Implicitly, also the future objective of a European Union, announced in the SEA, was legitimised beforehand.

By presupposing a relation of democratic legitimation between the sovereign peoples of the Member States and the realisation of a European Union, so it can be argued, the SEA contributed to constitutionalising such a Union before it was even there. By suggesting that the relation of the peoples of the Member States to the European level of governance was comparable to that of a national sovereign people to its national government a crucial rhetorical leap to building a European federation was taken. The decision of early 1986 that the European institution would henceforth go adorned with the blue and yellow twelve starred banner only contributed to the aura of the existence of a European polity that encompassed the various national polities it consisted of.

Position of the government

What stands out immediately in the official documents in the Netherlands concerning the SEA is that the Dutch government did *not* present it as a decisive step on the way to a more statelike Europe. On the contrary, the second Lubbers administration dealt with the document as if it concerned a stopover, not to be dwelled on, on the way to something bigger and more important. Striking is the focus on economic integration. In the Queen's speech of September 1986, the document was introduced as 'a stimulus […] for quicker decision-making, especially aimed at the coming about of the Internal Market.'[583] The political and symbolic importance of the treaty was not dilated upon. In the explanatory memorandum, the transition from the common market to – in the rather technocratic words of the government – 'the single geographical, economic space without internal borders', to be realised by 1992, was referred to as 'the most important material decision' that the IGC had taken with regard to the EEC Treaty.[584] This change was expected to come with various positive economic consequences, such as higher employment rates and the strengthening of the economic position of the Economic Community.[585]

It is typical and telling for how the Dutch government approached the process of European integration, that the government did not enter into the substantial political relevance of the conceptual shift of a common to an internal market, or even brought it up as a question. The effects of increasingly statelike European Communities – soon to be the European Union – for the sovereign powers of the Netherlands were not elaborated on. The democratic connection between the people of the Netherlands and a European level of governance, presupposed in the preamble of the SEA, was not clarified nor were the implications of the development of the European Union for the constitutional relation between the Dutch people and its representation entered into. In fact, any special relation, let alone friction, between the new treaty and the Dutch constitution was – again– not considered to exist. This is illustrated by the presentation of the SEA to parliament for approval with a simple majority, in accordance with Article 91, subsection 1 – the former Article 60, subsection 2 – of the Dutch constitution.[586]

Instead of emphasising the new perspective that the SEA added to the relation between the European and the national level, the Dutch government focused on the continuation that the treaty brought, in the light of the objectives in the field of European integration set since 1957. The transition of a common market to an internal market was linked to the intention to develop the European Communities into a

European Union; the ultimate objective as had been laid down in the Stuttgart Declaration (1983) and subsequent documents on the future of the Communities. On the element of foreign policy cooperation, the Dutch government only remarked that fifteen years of trying to reach agreement on a common approach in this policy area were now embedded in the framework of pursuing the objective of the European Union.[587] The government did not enter into the democratic legitimation on the national level of this common foreign policy. It was stated that such a policy should be based on democratic principles and the observance of law and human rights, but in the explanatory memorandum it remained unclear if and how national parliaments would be involved in formulating the common foreign policy principles.

The fact that the government did not go into the fundamental political importance of the new phase in European integration marked by the SEA, can be either explained by a blind spot with the Dutch government for its crucial political implications or by intentional 'light' political framing in order not to raise concerns or objections in parliament. The first option seems more likely, especially when some of the general qualifications of the treaty by the government are considered.

In its general judgement on the SEA it qualified the treaty as a 'relatively satisfactory' compromise. For the Dutch cabinet its downsides were the limited extension of the method of Qualified Majority Voting (QMV) – the Dutch government 'would have liked the use of an ampler measure' in the use of this supranational method of decision making – and the fact that enlargement of the competences of the European Parliament had not been reached. These remarks show how the Dutch governmental elite interpreted the concept of 'supranationalisation'. It measured the extent to which this ideal was reached on the basis of the instances in which QMV was applied in the Council and the involvement of the EP in European decision making. For the crucial rhetorical and symbolic steps towards supranationalisation it had no eye. This suited a political culture in which the national constitution had been deprived of its safeguards against an incoming tide of treaty law in the assumption that this would benefit the country. In this country, for which internationalisation was and had always been one of the most prominent existential features, constitutive statelike rhetoric was not taken all too seriously.

Outside the political arena, however, the political relevance of the progress made in the field of European integration did not go unnoticed. The Dutch Scientific Council for Government Policy

(WRR) passed some critical comments on the new treaty.[588] In its report *De Onvoltooide Europese Integratie* ('The Incomplete European integration') that was sent to the government in March 1986, the Council argued that: 'While here in the Netherlands we are deliberating upon the desirability of a fourth layer of government, this layer has come into being above us almost unnoticed. Its effects are spreading steadily and make themselves felt, sometimes by surprise, in policy areas at first sight considered far away from the economic integration process.'[589] It is an interesting remark, since it was the first time that the far- reaching implications of the European integration process for the political sovereignty of the Netherlands were pointed out this sharply in the public intellectual debate.

The comment gets even more relevant when it is put beside contributions to the Dutch intellectual debate on European integration in the second half of the 1980s. In ever more of them, the downsides of and disappointment with the process of European integration were discussed.[590] It led Hans Nord, co-founder of the Dutch branch of the movement of European federalists (BEF), to express his disillusionment on the occasion of the fortieth anniversary of the European Movement in the Netherlands in 1987: 'European unification has not become what we, in 1947, hoped it was going to be […] European integration has become bureaucratic. It is done because it has to be done. But enthusiasm, no, nobody is enthusiastic anymore'.[591] Looking back on these years, the Dutch diplomat and in later years, Minister of Foreign Affairs, Bernard Bot, also keeps memories of the foundering enthusiasm for the process of European integration after the mid 1980s: 'The more [the integration] progressed, a tendency developed counter to it. The first went increasingly in the [direction] of a European market and, on the other hand, there was a stance [of] a decreasing belief, or increasing nationalism.'[592]

In parliament, however, still a non-hesitant political majority in favour of European integration was found. This continuing consensus on the wish for further integration was reflected in the parliamentary debate on the approval of the SEA.

Debate in parliament

The CDA and VVD, the coalition parties, together with the PvdA and D66 welcomed the SEA as another step on the way to their ideal of European integration.[593] These parties would approve the SEA because they considered further integration 'necessary'; the return of the old necessity argument although it stands out that this time little effort was made to flesh out the basis for the need for further integration.[594]

It is striking that the intention to approve came *despite* the many shortcomings that these parties also observed in the treaty and which were central in their contribution to the discussion of the document.[595] In line with the comments of the government on the treaty, in the conception of 'supranationalisation' of these parties, the SEA fell short with regard to QMV decision making in the Council – which had only been introduced in a limited number of policy areas – and involvement of the EP.[596] The latter shortcoming was mainly stressed by the CDA, PvdA and D66. In their view, a continued weak position of the EP implied a fundamental problem from the perspective of democratic control. Confronted with an institutionalised Council that, albeit only in particular policy areas, could decide by QMV, the national parliaments were, according to these parties, increasingly in danger of losing their hold on the process of European integration. In this they were supported by the Dutch Council of State that had indicated it to be one of its greatest points of concern.[597]

The PPR brought up the concern about democracy as well. This party explicitly stated that it feared the coming into existence of a 'Europe without citizens (…) a centralistic monster, mocking Montesquieu's separation of powers.'[598] It stressed that it did not oppose the integration process in itself, but its tendency to develop the institute of the Council into: 'a water head of powers […] planted on a democratically insufficiently equipped body in the form of the European Parliament.'[599] The fact that both the Council of State and the European Parliament had also been very critical with regard to the democratic aspect, had convinced the PPR that it should vote against the Treaty.[600]

The concerns about the grip of the national parliament on the process of European integration indicate that these parties were aware that in the process of European integration, power until then exerted on the national level, was leaking to a level of governance that was not sufficiently democratically compensated for. It implies that these parties saw that 'Europe' as a political power was growing. The wish of these various political parties for stronger parliamentary control comes across as a logical reaction. The fact that they primarily looked for democratic compensation on a European level, pleaded for *more* integration (more QMV decision making and a stronger EP) instead of less and did not scrutinise their own role, however, is typical. This can only be explained from their characteristic understanding of supranationalisation and the role of the Netherlands in it. In the post-1953 mindset, in which these parties had functioned for more than thirty years already, the national domain was rightly and desirably considered subservient to

the supranational, i.e. European level of governance. Telling for how the Dutch political mainstream tended to strengthen its grip, was the motion proposed by the PvdA, CDA and D66 that asked for the commitment of the government to 'to do its utmost' to strengthen the role of the EP.[601] Requesting the government in such a manner was one thing, but really intervening by, for instance, insisting on greater national democratic control of the government's actions in Brussels ran counter to their views on how the Netherlands should position itself in matters of European integration.

This was different for those parties that had categorically refused to submit themselves to the mainstream way of thinking. The small Protestant-conservative parties SGP, GPV, and RPF had been explicit for years already in their fundamental rejection of the transference of sovereignty and the objective of a European Union. In the approval procedure of the SEA, this was no different.[602] To them, the democracy issue was a key factor, but these parties questioned it on a more fundamental level. The RPF disputed the link, established in the preamble of the SEA, between the process of European integration and the wishes of the democratic peoples of Europe. In particular, the statement that the EP was a channel for the peoples to express themselves, was attacked: 'Considering the turnouts at the elections for this parliament, also in our country'– after the turnout rate of 58.1% in 1979, the 50.1% turnout of the EP elections of 1984 had again been disappointing – 'the RPF did not share this opinion.'[603]

Although this attack on democratic legitimacy, based on the turnout rates at the European elections, was in academic terms not particularly strong, the RPF cleverly anticipated feelings on the malfunctioning of the European democracy that already existed in- and outside parliament. Moreover, the remark is interesting because it reveals a fundamental difference of views. The image of a democratic relation between a European level of governance and the national peoples of Europe – the relation between these peoples and a European polity – as created in the preamble of the SEA, was contested here. In this regard, the RPF comment fundamentally undermined the attempt of the twelve governments to indirectly democratically legitimise their actions.

Something similar happened with regard to the introduction of the term 'Union', which was also received with anxiety in Dutch Protestant-conservative circles.[604] Gert Schutte, MP for the GPV, considered this renaming a confirmation of the tendency towards a centrally ruled Europe, and towards the 'Europe of the citizen' – a trendy term in both Europe and the Netherlands during the 1980s that

was intended to bridge the first signs of a gap between political elites that made an effort to build a European polity and national citizens that seemed to hold aloof.[605] According to Schutte the presentation of Europe as the mother country of all European nationals was a fiction. 'The European citizen […] is a *homo economicus* in the first place,'[606] he claimed, lacking a political, cultural and historical bond with a European-wide polity. Such an economic citizen was 'a somewhat lean figure' to build a politically integrated union on. The *no demos*-argument, in other words, was applied again, and aimed this time at nullifying the attempt of the governments to legitimise the project on the basis of the concept of national citizenship.

The resistance of the Protestant-conservative parties against the institutionalisation of foreign policy cooperation was based on considerations of a similar kind. In the view of the GPV, RPF and the SGP foreign policy was an essential element of the sovereignty of the state, not to be given up; Europe was not a state, did not have the legitimacy of a state and should, for that reason, not be invested with the powers of a state. Gert Schutte (GPV) brought forward that keeping a free hand in international affairs was essential – in particular for a small country like the Netherlands – in order not be forced to go along with policies decided on by the bigger Member States. He meaningfully referred to the diverging national interests of the various Member States that had remained despite the process of European integration: 'The Europe of France for instance is definitely something else than the Europe of the Netherlands.'[607]

Thus, Schutte launched the attack on the notion, structurally upheld by a political majority in the Netherlands, that supranationalisation would eventually result in a unified Europe, ruled by a common interest, instead of individual national interests. His words amounted to the view that Europe would remain essentially divided and that harmonious European unity was an illusion. Here Schutte touched on older parliamentary concerns of the Netherlands being a country not able to control the European continent; a concern that had in fact been a core motivation of the political majority to keep the Netherlands among the pioneers of progressive European integration, that had been raised again with the accession of the Mediterranean 'aliens' and that would only increase in the decennia to follow.

Schutte and his party were again willing to take a pragmatic stance. Since heterogeneity did not matter on the market place, the GPV had no fundamental objections against sectorial, namely trade integration. Progressive integration in the fields of politics or even

economic policy, on the other hand, was something completely different. Capitalizing on the problems – a milk lake and a butter mountain – that had resulted from the Common Agricultural Policy (CAP), designed by Sicco Mansholt in the late 1950s, Schutte held out the spectre of an autonomous European authority meddling in ever more policy areas: 'I cannot bear to think of a future in which a central authority in Strasbourg [autonomously, JH] decides how much milk our farmers here, are allowed to produce.'[608] Here the Christian-conservatives found assent with the PPR, which also pointed out the importance of being in charge in essential policy areas. With a common foreign policy, this party for instance feared to be confronted with the 'improper argument' that the Netherlands should set its goals according to what would be feasible within the context of European political cooperation.[609]

Reinforcing their claim that the Netherlands should cherish its independence, the three Protestant-conservative parties referred to the Dutch ideal of international neutrality of former days. The handing over of national authority in the field of foreign policy, they claimed, was made out to lead to breaches with historically cherished constants in the foreign policy traditions of the Netherlands.[610] The 'progressive infringement' since 1945 of the century-old tradition of Dutch neutrality, would alienate younger Dutch generations from this specific element of national history; a development to which these parties were not willing to contribute.

From defence towards consensus

In line with earlier debates, the political majority was not receptive to the questions and problems pointed out by the sceptics of progressive European integration. Their questions regarding democratic legitimacy and political identity of Europe were received as an attack on the precarious process of European integration. Besides, the appeal to the tradition of neutrality, deliberately abandoned after 1945, was, contrary to the almost sacred conviction, by now deeply rooted in the mindset of the political mainstream, that neutrality – or 'withdrawing behind the dikes'– as a means to safeguard the Dutch existence, was no longer tenable. The political majority was just not open to a shift of perception in this matter.

The same held true for the firm conviction that European unity – which presupposed homogeneity in interests and wishes – would eventually be possible, also in an expanding union that would be by nature more diverse. Similarly, the fundamental political theoretical question of how the process of European integration could claim

democratic legitimacy where a European *demos* was lacking and the direct elections of the EP were still not much more than a not all too popular formality, was ignored in the belief that all would be right eventually as long as the Netherlands would stay focused on keeping promises made in the past, in order to gather the reward waiting at the end of the integration process. Again the Treaties of Rome, and their approval in the Netherlands were referred to as a ground for approving the SEA. The remonstrance of the Christian-conservative camp that after thirty years the goals that had been set in 1957 might need revision – now that the Communities consisted of twelve instead of six and the historical circumstances had drastically changed – was brushed aside by the Minister of Foreign Affairs Hans van der Broek. He claimed: '[…] that since those days the situation has fundamentally changed. That is undoubtedly true, but I do not think that because of that, the basic considerations of successive Dutch cabinets have actually changed.'[611] It illustrates the determination of the government, supported by the parliamentary majority, to pursue its quest for European integration, irrespective of the circumstances of the time and any questions that could be raised with regard to the outcome. 'We are going forward, even if it is sometimes like the Echternach procession', the State Secretary of European Affairs, René van der Linden sighed in the debate. [612] This rendering of an almost religious belief in a promising reward at the end of the integration process, has the character of a creed; a term he himself also literally used to describe his religiously political conviction that the path of European integration should be walked further.[613] The old conviction that European integration was an instrumental means to a desired end, by now seemed to have developed into the belief that European integration was a means in itself.

What the 'end' of the integration process exactly would be, when it would be reached and what the reward would be, however, was still not clear or even – as time passed by – became ever more vague. It is noteworthy that in the debate on approval of the SEA the term 'federation' – in the early decennia of European integration used by all advocates of a united Europe to define the goal of the process – was only applied by its opponents to define the ultimate consequence of proceeding on the, in their view, disastrous path of European integration. Not a single advocate of the treaty put the SEA within the framework of the development of a federative Europe. Being questioned on the details of the final objective of the European Union that was said to be brought nearer by the SEA, the Minister of Foreign Affairs Hans van der Broek (CDA) remained equivocal:

> 'The Europe the government envisages in the long run, will be a Europe in which at any rate economic cooperation is progressively integrated […] It must be a Europe that in the field of monetary cooperation will have more integration, a Europe that in questions of peace and safety has to develop an identity of its own, […] a Europe that wants to be of significance in improving the chances of the Third World. […] This must be done within a democratically controlled structure.'[614]

European *cooperation* – a thing that the Netherlands had been in favour of for ages already – and European *integration* – a new process, affecting the core of state sovereignty – were mixed in this long-term perspective of Europe and it was not questioned if and how both concepts differed and/or were related. The relation between the process of European integration on the one hand and the continuity of the political identity of the Dutch state on the other – would the sovereign state of the Netherlands eventually become a state in a European federation or even a province? – was not entered into.

Considering the focal point of the Dutch political mainstream on the positive effects of European integration for the political and economic well-being of the Netherlands, this limitation is not to be wondered at. The primary, outward focus on European integration as a means of disposing the other members of their statelike traits and power – a thing that was considered to benefit the position of the Netherlands – came with a lack of attention for what this process of building a new European political entity eventually implied for the political identity of the Dutch state and its people. In other words, conceptual questions regarding political identity were ignored in favour of the economic and political gains that were believed to result from European integration. It underlines the continued existence of a paradoxical majority mindset in which supranationalisation was one-sidedly perceived as a means to contribute to national interests. Within this mindset, ironically, the essential characteristic of the concept was overlooked, i.e. that progressive supranationalisation might ultimately imply that an autonomous European power would call the shots in areas that had until then been reserved for the Member States and might thus get in the way of Dutch national interests that changed and developed over time.

On 18 November 1986 the CDA, VVD, PvdA and D66 unanimously supported the bill of approval on the SEA in the Dutch Lower House. On 16 December the Upper House followed. The votes against from the GPV, SGP, RPF, PPR, PSP and CPN could not shift the balance.[615] With

the approval of the SEA the basis was laid for a new phase in the process of European integration in which Europe had an 'internal market', geographical borders would disappear and a European Union was to be proclaimed. A phase, so it would turn out, in which conceptual difficulties following from progressive European integration and supranationalisation could no longer be ignored.

Chapter 5
Spring Tide Stress 1986—1997

'Community treaties are not just treaties [...], but those are treaties concerning all citizens and giving the citizens rights. Because of the implementation measures millions of legal relationships with and between the citizens of all Member States have come into being.'

Pieter VerLoren van Themaat (1991)[616]

5.1 Introduction

With the ratification of the SEA, the EEC Member States had formally agreed on the objective of bringing about a European Union. Sub-aims, seen as essentials parts of the realisation of this overall goal, were reaching agreement on a common policy in foreign affairs, on the required political instruments for that purpose and on an Economic and Monetary Union (EMU). The second half of the 1980s was marked by great expectations and ambitions for the process of European integration for the nearby future.

The agenda of the meeting of the European Council in Hannover in 1988 was dominated by elaboration on the great plans for the years to follow. A committee, led by Jacques Delors and including all central bank governors of the EEC Member States, was installed to propose concrete plans for the development of the EMU. In April 1989 this committee submitted its final report that advised on the integration of financial markets, the irreversible convertibility of national currencies, the irrevocable fixing of exchange rates, and the possible replacement of the national currencies with a single currency.[617] The committee proposed a time schedule – subdivided into three phases – for creating the EMU, shifting from closer economic and monetary coordination, starting in 1990, to a single currency with an independent European

Central Bank and rules governing the size and financing of national budget deficits from 1999 onwards.

Meanwhile, a start had also been made with the abolition of the border checks mutually dividing the territories of the Benelux countries, the Federal Republic of Germany and France. On 14 June 1985 these states had reached an agreement in Schengen (Luxembourg), which formed the basis for a full-fledged system of freedom of movement of goods, persons and services as it would develop in the following decades. Formally, having come into existence outside the common European legal framework, the Schengen Agreement or Accord (also called 'Schengen') was not a part of the process of European integration. From the outset, however, it was clear that the removal of the border checks would be an asset in, or even a necessary condition, for finalising the Internal Market. When in the course of the years more EEC members decided to join in the process, the merger of Schengen into the *acquis communautaire* became a convenient political option. With the signing of the Treaty of Amsterdam in October 1997, the Schengen Agreement became an intrinsic part of the European treaty framework.[618]

Parallel to the attempts of fleshing out the aim of a European Union, the Twelve were taken over by a range of historic events that marked the transition between the 1980s and the 1990s and which formed a reality check for those working for European unification. The fall of the Berlin Wall in November 1989 and the disintegration of the Soviet Union that followed, had existential implications for the EEC. No longer did the European Member States have to think of defence against a Communist power block in determining their ambitions and actions. New problems, however, arose. Firstly, the diminishing of the east-west tensions stripped the European integration process of one of its *raisons d'être*. Secondly, the events confronted the Twelve with a group of potential Member States that, in the long run, might want to take up a place within the new European order. In addition, the question of German reunification became pressing. These developments raised doubts and questions among the Twelve on the foundations and stability of the integration process and, as a consequence, the need was felt to press the integration process further.

But there was more to worry about. In August 1990 the Iraqi invasion in Kuwait heralded the outbreak of the Gulf War. Not even a year later, in June 1991, the disintegration of Tito's Yugoslavia was a fact. A horrendous civil war between Serbs, Croats and *Bosniaks* was the result (1991-1995). It confronted the European Community with the relativity of its founding *Nie Wieder*-maxim. The realisation that

much was still to be done became even clearer when the EEC members discovered that, in spite of their formalised ambitions to develop a common foreign policy, they proved to be unable to formulate a common 'European' approach to both the Gulf- and the Yugoslavia conflict. The political-military initiative was perforce left to the UN and NATO; operations in which a central role was reserved for the United States of America. It was a thorn in the flesh of the united Europe. Going counter to the desire of showing itself as a factor to be reckoned with in international politics, it turned out to be fairly impotent when the chips were down.

Thus the transition to the new decade was characterised on the one hand by the hope to realise the ambitions that had been set with the SEA, whereas, on the other hand, the fear of a standstill or failure of the project was widely present. Both feelings, however, contributed to the urge to proceed with deepening the process of European integration and to extend the influence of the European Communities as soon as possible.[619] Within this atmosphere of political will and pressure, the Schengen process, the plans for an EMU and a new treaty developed. With the ambition to deal with many problems in one blow, the Treaty on European Union was signed in Maastricht in 1992. This treaty marked the birth of the European Union, equipped with competences in the monetary and foreign policy field and in judicial matters; areas that until then had been the prerogatives of the nation states. The signing of the Maastricht Treaty thus marked a highly relevant qualitative development. Finally, the contours of a – *de facto* –European federation took shape. In 1997, with the signing of the Treaty of Amsterdam its competences were further refined.

By hosting both treaty making procedures of the 1990s, the Netherlands had a central role in bringing further the process of European integration. In line with forty years of supporting progressive European integration and the Dutch ratification of the SEA, the 'fourth layer of government' – to use the words of the Dutch Scientific Council on Government Policy – was in the 1990s again made stronger and embraced by the Dutch governing elite. Reviewing the enormous implication of the developments in the field of European integration between 1986 and 1997 for the national domain, this support can be marked as special in every regard. The negotiations on the EMU, a common foreign policy, and European citizenship made clear that the process of European integration had become a matter of utmost importance, touching upon more and more essential elements until then belonging to the national sovereign legal domain.

Pushed instead of deterred by these implications for the internal order, the Netherlands persistently remained in the vanguard of those striving for new forms of integration. In fact, the era between 1986 and 1997 can be rightly marked as the time in which the Netherlands truly assumed the role of 'best pupil in the European class'. The growing fear of losing its status in a European Union consisting of over twenty instead of twelve Member States was the reason why successive Dutch governments thought it was wise to take the lead in modelling its institutional design in accordance with Dutch wishes.

Also in parliament, the increase in the presence of Europe in a growing number of policy areas resulted in a stronger involvement in European affairs. The wave of 'directives' – European rules that obliged the Member States to convert the intent of these directives within a certain term into national legislation – flooding the Netherlands in these years, led to arrears in the compliance of the Netherlands with its European legal obligations. In 1987, the country was condemned by the ECJ for not observing the Bird Directive that obliged the Member States to protect their bird populations according to European rules.[620] In 1994, the country was convicted twice for not duly notifying the European Commission in accordance with the Notification Directive 83/189.[621] More than anything, these judicial processes made clear that Europe, with its European legal framework, had become a power in itself that was able and willing to enforce the rulings that the Member States had committed themselves to on paper. The former MP (PvdA), senator and emeritus professor of Constitutional Law, Erik Jurgens, recollected that the swell of European directives in the 1980s and the ECJ convictions were crucial for the national parliament to become aware that European integration to an increasing extent interfered with the national domain: 'It became more and more clear that we depended on decisions from Brussels.'[622] It was crucial for the development of a realisation in parliament that it should extend its grip on what happened in Europe; a grip that could only grow by way of a stronger control on the actions of the Dutch government in Brussels.

The parliamentary debates on European integration in the period 1986-1987 reflect this growing awareness. The lecture of the Dutch professor of Constitutional Law, Ter Kuile, with the telling title 'How far is The Hague from Brussels from now on? Reflections […] on dwindling powers of our provincial [sic!] States-General within the European Community', held at the opening of the Dutch political year in 1989, testifies of this, as well as the symposium organised on 6 May 1992 in honour of the opening of the new building of the Dutch Lower House: 'Will the Lower House survive Europe?'[623] The establishment

of a permanent parliamentary committee for European affairs in the Netherlands in 1986, with an 'initiating, signalling and coordinating' role for the purpose of parliamentary control on decision making in the European institutions – in particular the Council of Ministers – is another clear indication.[624]

The change of mentality becomes also visible in the parliamentary debates on Schengen, Maastricht and Amsterdam. Because of the interference of Schengen with national ideas on crime fighting and immigration, the discussions within the Dutch political community on the process of removing borders focused sharply on its compatibility with the preservation of national notions on democratic governance. The Schengen debate reveals the tension experienced by the political mainstream in parliament between upholding its more than forty-year-old pro-European disposition, characterised by openness to new European developments, and the consciousness that stronger national democratic procedures were needed in order to enhance the parliamentary control on what was happening in Europe. The debates on the treaties of Maastricht and Amsterdam show that throughout the 1990s this was the main issue in relation to the process of European integration, that kept parliament busy. It was the revival of a discussion that had been at the root of the constitutional reform in 1953. But although significant cracks became visible in the traditional mindset of the Dutch political mainstream, a tradition of forty years of openness towards the process of European integration turned out to be tenacious.

5.2 Implications of a Borderless Political Identity: Schengen I and II

The Schengen Agreement of 14 June 1985 was designed as a declaration of intent that kept silent on the details of its implementation. Conscious of the complexity of the removal of border controls, the initial five signatory parties agreed on an undefined time term for the full implementation of the Schengen Agreement. In the text of the document this is reflected by formulations such as 'endeavour' or 'seek solutions' for relaxing their policies regarding visa, licensing of commercial road transport policies, aliens, etc., 'as soon as possible'.[625] Thus it laid down the basis for a complex process that called for the harmonisation of the national policies of the participating countries in the fields of customs, migration and combating crime and for that reason contributed to the development of an integrated Europe. The agreement, however, was not very precise on how this process should get form. On 19 June 1990 a supplementary agreement – the

Convention on the Implementation of the Schengen Agreement (also known as Schengen II)[626] – was signed in order to convert the 1985 arrangement into a stronger, implementable instrument.

Schengen I

On behalf of the Netherlands, the first Schengen Agreement was signed by the first Lubbers administration; a coalition of the liberal VVD and the Christian-democrats of the CDA, led by Ruud Lubbers (CDA). In the presentation of the agreement to parliament it attracts notice that little was said on the motivation for signing the accord. In the explanatory note, dated 28 November 1985, approval of the agreement by the Netherlands was advised 'in the light of the aims of the European Community'.[627] It is striking that the Dutch government immediately linked Schengen to the process of European integration, because – as has been observed – formally the Schengen process came into being outside the official European legal framework. The remark shows how, in political practice, the two processes were immediately rhetorically connected; a clear illustration of the power of constitutive rhetoric. The statement was not further elaborated on; a silence that is likely to be related to a presupposed political consensus on both the objectives of the process of European integration as on the perception of the Schengen Agreement as a step towards these objectives.

As was also the case with the presentation of the SEA, the Dutch government downplayed the significance of the agreement in its presentation to parliament. In fact, the approval of the Schengen Agreement would have far-reaching consequences for the Netherlands. The existence of border checks had always been an important tool in the prevention, on a national scale, of certain forms of criminality, in particular the illegal trade in drugs and weapons and other forms of trafficking and tax frauds. Moreover, these border controls had an important function in arresting the perpetrators of such criminal acts. When Schengen entered into force, supervision on the influx of people from outside the Schengen area henceforth needed to be entrusted to customs officials and guards at the external borders of the Schengen territory. In addition, the new arrangements might eventually make it necessary for Dutch citizens to have an identity card with them, to be produced on request. Thus Schengen would directly affect the national security policy of the Member States and their citizens as well. In line with the presentation of Schengen as an element in bringing about the higher cause of European unity, the government did not pay much attention to the complexity of all this. It basically concluded that the loss of the advantages of national border controls, was to be positively

compensated for by a higher degree of cooperation of police and the judiciary on the level of the signatory countries.[628]

As for the approval procedure, the government also preferred to keep things simple. In the explanatory note it declared that during the negotiations the Netherlands had defended the view that the agreement was no more than a common policy arrangement, not to be subjected to the official ratification procedure a formal treaty would require: 'For the agreement only touches the realisation of a joint policy on the administrative level, on the basis of the existing legislation of the five countries.'[629] By presenting the agreement as 'administrative', not affecting national legislation in any way, the government, in other words, could avert a formal ratification procedure in which the agreement needed to be presented to the Dutch parliament. But, the explanatory note went on, that, since certain other parties to the agreement – not further specified – had insisted on signing the agreement as a formal treaty after all, formal approval by parliament was therefore needed.[630]

However, the Dutch constitutional system offered another possibility to prevent national parliamentary debates from slackening the approval procedure. The possibility of approval with tacit consent, since 1983 couched in article 91, subsection 2 (formerly Article 61) was convenient here. According to the government this speedier procedure was opted for 'because during consultations […] it had been established already that the standing [parliamentary] committees endorsed the Agreement.'[631]

The Dutch Council of State did not have any objections with regard to the proposed approval procedure.[632] And although very little can be traced of the consultations with parliamentary representatives that the government referred to, from the continuation of the process it can be deduced that a majority of the Dutch parliament was willing to agree with the government. As requested, it accepted the agreement in silence, without a parliamentary debate taking place. As a consequence, the approval of Schengen I took place without attendant parliamentary debates and therefore the appurtenant parliamentary documents were never produced. This parliamentary silence, however, was short-lived.

In the years after its entering into force, a fierce debate developed on the actual effects of the Schengen Agreement. Since it was implemented in various stages, implying that the effects of the complex Schengen process became only incrementally visible, the parliamentary debate on its implementation was spread over several years between 1985 and 1995. Every new stage in the implementation-process brought up new or additional parliamentary questions,

resulting in an extraordinary amount of parliamentary documents – more than a hundred until 1995 – related to the agreement.[633] A peak in the intensity of the ex-post parliamentary debate on the Schengen process can be observed around the signing of the Convention implementing the Schengen Agreement (Schengen II) in June 1990, but serious debates on Schengen also took place before that time. Regular governmental reports on the implementation of the agreement were sent to parliament from January 1987 onwards.[634] The parliamentary discussions on the Schengen progress were often held within the permanent parliamentary committee for questions on Justice and/or – the recently established – parliamentary committee on European Affairs. These committees reported their conclusions to their fellow parliamentarians.[635]

What stands out in the parliamentary debates that followed in the course of the implementation of Schengen I is that parliament discovered that the agreement was *not* to be perceived as merely an administrative matter. This discovery contributed to the breaking down of the initial 'business as usual'-frame of the government. Although many MPs still appreciated the agreement as a necessary step in the process of realising European unity, there were conspicuous concerns on how Schengen I touched upon fundamental characteristics of the Dutch parliamentary democracy. In the Lower House, the spokesperson on foreign-affairs affairs of the CDA, Hans Gualthérie van Weezel, for instance remarked that the abolition of borders affected the various national immigration policies; in his view 'possibly [the] most complicated and most delicate matter that in the various countries, with their completely different tradition and history, has grown over the years.'[636] Also the Dutch policy of tolerance on soft drugs – cherished in the Netherlands but reviled abroad – was feared to be sacrificed in the course of implementing Schengen.[637] Or, as it was more generally worded by D66, the agreement might meddle with 'important achievements of the Dutch society'.[638] The fear that Schengen implied the loss of national policy attainments was a recurring issue, which became more pregnant and concrete with every new parliamentary debate on the progress of Schengen's implementation.

It is noteworthy that the Schengen process united advocates and opponents of the European integration process in their concerns. The abolition of national borders went counter to everything the Protestant-conservatives believed in. The comment of Koos van den Berg (SGP) that 'the border plays an essential role in the country's own sovereign legal order' strikingly resembles the observation of Gualthérie van Weezel.[639] Most importantly, the various criticisms

show that in the course of the implementation of Schengen I, in broad layers of the Dutch parliament the realisation set in that it was not just an administrative policy agreement, dealing with rather insignificant forms of policy harmonisation. On the contrary, Schengen I opened the gate to a whole new world of unity in policy that might run counter to national freedom in determining deviant national stances, attuned to specific national preferences.

An additional downside that bothered advocates and opponents of further European integration alike was that the process of implementing Schengen – characterised by successive partial arrangements and consecutive rounds of intergovernmental negotiations – lacked democratic transparency. As a consequence, the concern came up with D66, PvdA and VVD, that in the course of implementing Schengen 'parliament and with it Dutch society will […] be confronted with a series of draft proposals and treaties that can hardly be amended.'[640] Although previous European treaties had already laid bare this mechanism, due to its lengthy and continuous character the Schengen process made this more visible. The governmental metaphor of Schengen as the 'motor' or 'locomotive' for completion of the internal market, fanned anxiousness in parliament. [641] Andrée van Es of the new party *GroenLinks* (Green Left), that had sprung from the 1990 merger of the PPR, PSPS, CPN and the EVP, warned that 'the column, once in motion, cannot be stopped.'[642]

These remarks reveal not only that by now the Dutch parliamentarians had internalised that the process of European integration was characterised by piecemeal dynamics and that a vote in favour of an, at first sight, minor sub-agreement could have far-reaching and unforeseen implications later, but also that this process had progressed to such an extent that it should be addressed in parliament. The ever further stretching influence of Europe, which went far beyond economic or trade benefits now, came with an increased need in parliament for influence. It decided to put its complaints into action. In an attempt to make up for the lack of grip and overview that they experienced, D66, VVD, CDA, PvdA, RPF, SGP proposed a joint motion in which they called on the government to 'better inform' parliament on the policy implications of the implementation of the Schengen agreement. [643] It was adopted by common consent.[644]

Whereas parliament had now clearly expressed its desire to be kept informed, the phrasing of the motion left considerable latitude with regard to how and to what extent the government should keep parliament updated. Thus, in line with the political tradition of substantial autonomy of the government in international

affairs, adoption of the motion did not hinder the government from proceeding with its negotiations in the Schengen process. Relying on a parliamentary majority that was still positively inclined to European integration in general and Schengen in particular, it is likely that the Dutch parliament had aimed at a formulation that did not meddle too much with the Dutch constitutional tradition of governmental freedom in international negotiations. The wording of the motion struck a balance between informing parliament on the one hand and sticking to the old parliamentary custom of holding aloof in treaty making, on the other. Now the ball was with the government again.

Schengen II

In the course of implementing Schengen I it became clear to the signatory parties that additional arrangements were needed in order to reach the desired result. On 19 June 1990, therefore, a second agreement was signed, fully dealing with the implementation of Schengen I.[645] That task was assigned to a so called Executive Committee, which received regulative competences in certain areas.[646] Another important instrument established by Schengen II was the Schengen Information System (SIS) – a database used by the Schengen states to exchange information on persons, goods and services in order to strengthen international security.[647] Neither the European nor the national parliaments were given a role in controlling the work of the Executive Committee, nor could decisions made by this body be disputed in a court. Thus, new organs with significant powers were established without being adequately submitted to democratic or judicial checks, other than the democratic process of ratification.

Position of the government

The third Lubbers administration – a coalition of CDA and PvdA – signed the agreement on behalf of the Netherlands. Remarkably, in contrast to the tacit consent asked for with Schengen I, this time it opted for a full approval procedure in parliament. In line with the constitutional tradition as it had developed since 1953, the government presented the agreement for approval to parliament on the basis of the provision in Article 91, subsection 1 of the Dutch constitution. Thus it made clear that the agreement was not in conflict with the Dutch constitution and considered a simple majority sufficient for approving the treaty.

In the explanatory memorandum, it pointed out the value and necessity of Schengen II in order to realise the objectives set with Schengen I.[648] Again, the impulse function of the implementation of

the Schengen process for reaching the broader objectives of European integration was stressed.[649] By placing the new agreement in line with earlier commitments entered into by the Netherlands, the government – similar to what it had done with Schengen I – downplayed its significance and, moreover, gave it a hint of legitimacy before parliament could have expressed its thoughts about it. Hence, these remarks can be read as indirect rhetorical attempts to convince parliament of approving the agreement.

Another argument of the government in favour of approval was that a rejection of the text of the agreement might be interpreted as a rejection of the Schengen objective as a whole. Since long and laborious negotiations had preceded the agreement on Schengen II, the government had no interest in parliamentary rejection of the agreement because it would send the Netherlands back to the negotiating table. This consideration, however, was rhetorically conveniently framed. Rejection by the Dutch parliament, the government claimed, might be understood in the other Member States as a signal 'that the aim of realisation of free traffic of persons in the Community was no longer alive in the Schengen countries.'[650] Would the Dutch parliament really want to contribute to this image of European discord and obstruction of the process of European integration?, was the rhetorical question implicitly put to parliament. By posing this question, the government anticipated the long standing pro-international cooperation mindset of the Dutch parliamentary majority in which the obstruction of the negotiation processes had been consistently perceived and portrayed as undesirable for the interests of the Netherlands. To this familiar consideration that started from the instrumental gains of European integration, the reputation of the Netherlands abroad was added as a factor to be taken into account. It was a rhetorical move that befitted the dawn of a new phase in the Dutch parliamentary debate in which the win-win character of the integration process – the Netherlands needs what Europe needs – was questioned in ever broader circles. This question was anwered by stressing the importance of the image of the Netherlands abroad.

The government spent some time on the details of the regulating power of the Executive Committee that followed from the right of this organ to make decisions implying rights and obligation for national citizens. Although the government stressed that the Committee was competent in this respect only in relation to a small amount of provisions of the, in total, 142 articles of the Schengen II agreement – again an example of how the implications of the new agreement were downplayed – it elaborated on the constitutional details of approval

of these so called 'implementation agreements'. Here, the rules as laid down in Article 92 of the Dutch constitution applied: 'Legislative, executive and judicial powers may be conferred on international institutions by or pursuant to a treaty […].[651] Although it was not made explicit, this seemed to imply that, according to the Dutch government, the Executive Committee, was considered to receive the status of an international institution.

With regard to the SIS, the government tried to allay possible parliamentary worries about this system to effectively signify a database violating citizens' privacy rights. Instead of being an 'unrestricted exchange of information', the government pointed out that the basic principle would only be to record 'notifications' that would enable the countries involved to act on the basis of the rules as laid down in the implementation agreement and national law.[652]

Since a majority in parliament was still composed of parties generally in favour of progressive European integration – in 1990, the CDA, PvdA, VVD and D66 still held a majority of more than 90% in the Lower House – the government could to a great extent rely on the appeals it made to the general and steady pro-European inclination of the Dutch parliament. But the elaboration on the details of the Executive Committee and the SIS seem to indicate that government expected these to constitute possible obstacles in the parliamentary approval procedure. Especially with the establishment of the Executive Committee, which could decide on matters concerning the citizens of the Netherlands without interference of the national parliament, such concerns were likely to come under discussion again. The government's digressions on these changes come across as anticipating the concerns in parliament on its imminent inability to democratically control the results of the Schengen process.

Taking these rhetorical precautions does not seem to have been without reason. Also in the public intellectual debate in the Netherlands, from the late 1980s onwards, tone and attention shifted to the loss of grip on the European integration process. During a national conference of experts on public administration in 1991, for instance, the professor of European law and Secretary-General of the Dutch ministry of economic affairs, Ad Geelhoed, had already concluded that 'for the national legislator the substantive elbow room is shrinking.'[653] The rhythm of decision making, he observed, increasingly depended on what happened on the European level: 'also with a typically legal subject as the free movement of persons […] it is about enforced decisions, about choices imposed by the internal market.'[654] Geelhoed remarked that the Dutch parliamentary-democratic order was still

insufficiently aware of its community surroundings. The consequence of such realisations creeping slowly into the Dutch debate on European integration was that coming up with strong lines of argumentation in favour of going on with the process was becoming more important for the government. To put it more clearly, as the focus shifted towards the downsides of the European integration process and it, by consequence, became more contested, a stronger advocacy was needed of those consistently pleading in favour.

Even before the parliamentary approval procedure could commence and parliament could utter any concerns that might exist on the consequences of Schengen for the national democracy, support for the interests of parliament came from the Dutch Council of State which in its advice of 8 April 1991 recommended the government *not* to present the Schengen II agreement in the Lower House.[655] This, of course, was quite a radical proposal. With regard to the EEC Treaty, the Council had advised a heavier approval procedure than the government had in mind – an advice, as has been elaborated on in chapter two, ignored by the Drees IV cabinet. This time it went a step further, which may be seen as illustrative for the fact that also within the Council of State doubts and nuances with regard to the effects of European integration were trickling in. One of its main points of criticism related to the establishment of the Executive Committee. The Council of State deemed it undesirable to grant legally binding effect to decisions of this Committee: 'this means that for the Netherlands obligations may be created which are blocked from the right of approval of the States-General.'[656] Although the Council acknowledged that such a construction was constitutionally possible for decisions of international institutions, this practice should not be transferred to fields outside an 'institutionalised framework.'[657] This was in direct conflict with the claim of the government. In the perception of the Council, the Executive Committee did not meet the requirements of the Dutch constitutional term 'international institution' and, for that reason, could not be equipped with such powers.[658]

The Council of State, in other words, called the government to a halt now that it rightly observed a new development, namely that the government was about to establish a mechanism for European integration, outside the official political and treaty framework of this process. In addition, the advisory board pointed out the weakness of the presupposition underlying the plea of the government that Schengen II would contribute to the completion of a truly supranational or 'common' order. In response to the alleged impulse function of

Schengen II, it argued that the agreement might just as well have a decelerating effect on the process of European integration:

> 'Should the Schengen-system not be functional and effective after all, then it will definitely not bring about an impulse but will rather accentuate differences of opinion concerning a communal system, whereas a successful Schengen-system, […] could […] be going to function as an alternative for a system *communautaire*.'[659]

Subsequently the Council underlined that stating that non-ratification would radiate a negative signal to the other Community members was not a valid argument 'as a positive signal could of course be given in the negotiations within the Community.'[660] Thus, the Council took the edge off two central arguments of the government in favour of approval of Schengen.

It is illustrative of the determination of the government and the freedom that it tended to allow itself in the field of treaty making, that the Lubbers III cabinet decided to ignore the advice of the Council of State and to present the Convention implementing the Schengen Agreement to parliament notwithstanding the objections raised. In accordance with Dutch constitutional traditions, the government accounted for this approach in a written report to the Queen. The long and the short of it was that it stuck to its position that Schengen would function as a useful forerunner of European integration in the field of the free movement of goods and persons.[661] It, once again, referred to the consensus between government and parliament that had existed on the Schengen objectives since 1985.[662] It contested, moreover, the observation of the Council that the States-General would be denied democratic involvement in the decision making of the Executive Committee. It claimed that in the parliamentary debate on the approval of Schengen II a – both for government and parliament – mutually satisfactory modus might be found for deliberation, before irreversible decisions were authorised by the government.[663] With regard to the remark of the Council of State that the Committee could not be seen as an 'international institution' in the terms of Article 92 of the Dutch constitution, the government acknowledged that the Committee did not qualify as such an organisation indeed. Yet, it argued, that that article was nevertheless 'analogously applicable'; a classic Perelmanian argument based on association, applied to put a chaotic reality into an existing order. Accordingly, the Executive Committee – just like an international institution – could also make legally binding decisions.[664]

Instead of coming up with an analysis of how the Executive Committee fitted the terms of Article 92, the government, with a reference in fact, simply stretched the provision in Article 92 to the extent that it could also concern another category of organisations, i.e. organisations *not* formally qualifying as an international institution. In other words, the scope of the constitutional article was blurred in favour of the political objective of approving Schengen. This shows that, whereas the Council of State brought up strong democratic concerns based on the possible contribution of Schengen to the comprehensiveness and complexity of the European integration process, the government decided to move on at any cost. The argumentative mechanism that it chose to force through its opinion – stretching the constitutional possibilities – again demonstrates how it tended to rely on the old political consensus that the government needed freedom in concluding treaties and should therefore not find a rigid constitutional order in its way.

Debate in parliament

In accordance with the motion adopted in the course of approval of Schengen I, parliament indeed had been informed before new steps in the Schengen process were taken. Thus it could happen that on 13 June 1990, already six days before Schengen II was signed by the Dutch officials, the parliament of the Netherlands deliberated on the agreement. But parliament was not satisfied. An important complaint – which also clearly shows the weakness of the motion mentioned – concerned the fact that the exact text of the new agreement was still unknown to the Dutch MPs. This impeded the possibility of the parliamentarians to give an informed opinion on it.

How was European integration ever to develop into a democratic process when the leaders of government kept deciding on Europe's future in an intergovernmental way, behind closed doors, without involving the national parliaments, D66 wondered. Under the pretext of 'a fault confessed is half redressed,' the liberal-democrats of D66 even advised the Dutch government not to sign the agreement.[665] This party, which had hitherto always been outspokenly in favour of progressive European integration, referred to its growing understanding that:

'a process of integration with such radical effects in our society and in our constitutional state, cannot be put through without an open, substantive parliamentarian discussion, nor without giving society the possibility of participating profoundly in that process. If this does not

happen, opposing forces in politics and society will be aroused, which in the long term will frustrate the process.'[666]

This remark, which – in hindsight – has turned out to have a strikingly prophetic character, displays that the awareness that European integration should become democratically legitimised on the level of the nation state or should not be at all, was growing in this party, which had always been a loyal supporter of progressive European integration. GroenLinks supported this line of thought by contending that the credibility of European democracy was at stake.[667]

The Dutch government, however, turned a deaf ear to these calls from parliament. An argument of succession was applied to defend its choice. State Secretary of European Affairs, Piet Dankert (PvdA), claimed that since parliament had silently approved Schengen I in 1985, the basis underlying the Schengen II agreement had already been agreed upon by parliament.[668] This reference to a historical, democratically and constitutionally obtained consensus provided the new agreement with a hint of – historically grown – democratic legitimacy; a rebuttal of the argument of D66 and GroenLinks that democratic legitimacy was lacking.

In its persistence to get Schengen II approved, the government knew it could rely on the VVD, which in an earlier meeting on the matter had expressed its commitment to the long-standing consensus in the Netherlands that treaty making was to be treated with due parliamentary distance: 'You just cannot, with also one hundred and fifty MP's on your back, negotiate with other countries. We understand that very well and we wish to stick to that.'[669] The CDA, in addition, had argued that Schengen was needed, precisely to enhance the democratic legitimacy of European integration in the functional sense, showing the Dutch citizens the benefits of Europe.[670] To top it off, the party, more explicit than ever before, appealed to the *topos* of the Netherlands being obliged to act as a trustworthy partner on the international stage: 'The Netherlands cannot permit itself to be a spoilsport.'[671] Along the same lines, the PvdA believed that the international credibility of the Netherlands was at stake here.[672] In this way, the democratic calibre of the process was contrasted with the international credibility of the country.

These remarks of the VVD, CDA and PvdA all point to the fact that, although doubts were growing on if and how to proceed on the path of European integration, the traditional mindset of the political majority, in which the Netherlands was considered a small country that depended heavily on international partnerships and could only exert

influence to its own benefit from within the international community, was still strong and would not be broken just like that. In addition, the need to uphold the image of the Netherlands as a trustworthy partner on the international stage was referred to as an extra consideration for the Dutch government to sign Schengen II, regardless of any democratic concern that it might entail. The argument of the Netherlands' image became important when discontent grew.

In January 1992, six months after its signing, the official plenary parliamentary debate on approval of Schengen II commenced. In the meantime, parliament had been able to delve deeply into the agreement. The establishment of the Executive Committee invited critical reactions from various parties. Having an intergovernmental set up, in the sense that the cooperating national governments would decide on its course, control of its implementation by a (European) parliament or court would not be possible. Decisions of the Committee – also those legally binding all Dutch citizens – would lack a democratic basis. If Schengen II were to be ratified, the Dutch parliamentarians realised, the Netherlands would lose legal sovereignty without being democratically compensated for this.[673] If parliament were to accept this arrangement, it realised that, from the perspective of democratic control, it would move beyond a critical line.

Such a course of affairs went counter to what the Protestant-conservatives considered to be good governance. Gert Schutte, party leader in parliament and constitutional expert of the GPV, argued that since the decisions made by the Executive Committee could be characterised as 'treaties' or 'international agreements' in terms of the Dutch constitution, each of them should be separately presented for approval to the Dutch parliament: 'It is not a question of give and take between government and Chamber, but a legal right of the Chamber to come to a decision on approval, silent or not.'[674] The Protestant-conservative MP was supported in this view by a broad political spectrum. Similar comments were uttered by the SGP, the RPF and the CD, but also – and that is particularly noteworthy – by GroenLinks, D66, and even the PvdA: 'Of course diplomacy has its requirements, but actually there should be in the national parliaments a true uprising in order to take part in the decision making as much as possible, there where the decisions are made.'[675]

Moreover, various parties questioned or even attacked the idea of labelling the Executive Committee as 'international institution' according to the terms of Article 92 of the Dutch constitution. The crushing criticism of the Council of State was brought up.[676] Gert Schutte (GPV) was sharp in his remarks: 'If I am told that the

Constitution is not literally applicable […], but can be applied analogically, I become extra critical, for with analogies stipulations can be stretched so far that not much is left of these guarantees.'[677] To this he added the straightforward conclusion that, since the Executive Committee was not an international institution, the granting of legislative competences to this organ implied a deviation from the Dutch constitution, implying that the agreement should be approved in accordance with article 91, section 3 of the Dutch constitution, i.e. with a two thirds instead of a simple majority.[678]

Additional concerns related to the effects of the SIS on privacy and the negative effects of the harmonisation of criminal law for the Dutch policy of tolerance regarding soft-drugs.[679] As the vote on the treaty came closer, alienation of the citizens to the project of European integration was referred to as a possible consequence of Schengen. Initially applauded for making unification more visible and involving the national citizen more in its positive effects, now that abolition of the borders came closer, a reverse effect was increasingly feared. In the words of Hans Gualthérie van Weezel (CDA): 'Especially in a time of increasing instability and a possibility of civil wars, not far away from us, the average citizen gets concerned that the Netherlands will throw itself open too much. In that respect the psychological meaning of borders must not be underestimated, even if they are internal borders.'[680]

The concerns indicated that with regard to Schengen II ambivalence developed in the Dutch parliament. On the one hand, a political majority wanted to go on with the process of European integration and for that reason found it hard to reject the new agreement. On the other hand, however, the disadvantages of proceeding with the approval of a process that was essentially judged to be undemocratic, became ever more apparent. Now that concerns had become manifest in the ranks of the Council of State, the Schengen path became, also in parliament, increasingly contested. Even *within* political parties, opinion got divided. Illustrative is the internal discord within D66 – a party that had always staunchly supported progressive European integration, but which, at the same time, greatly valued democratic procedures. It openly expressed itself divided on the Treaty: 'the choice in favour or against Schengen is a choice between two evils, a choice between a treaty with evident flaws and not succeeding in getting a Europe without border checks at the internal borders.'[681]

The growing ambivalence, even within political parties, illustrates how the Schengen Agreements played a crucial role in the introduction of, what could be called, 'schizophrenic elements' in the parliamentary

mindset with regard to European integration. Whereas, within the parties of the political mainstream, the thought that European unification was an extension of the interests of the Netherlands had hitherto been almost undisputed, now clear cracks became visible in this paradigm. In the debates, a mental split began to show. On the one hand the political advocates of unifying Europe made an effort to uphold the line of argument that progressive European integration was needed and desired for the interests of the Netherlands. But at the same time, they raised all kinds of concerns with regard to national (democratic) interests that might well be at odds with moving further with European integration. In the years to come, this split view on European integration turned out to involve serious political consequences; consequences of which the Netherlands becoming Janus-faced was one of the most significant. Within the national political and public domain the governmental elite tried to re-adjust to the growing doubts, whereas on the European stage the Netherlands kept a steady focus on more and deeper European integration. The two diverging moves were masked by an ever stronger focus at home on the importance of preserving the pro-European image of the Netherlands abroad.

From defence towards consensus

Those who liked to see the agreement approved in spite of the many objections – the government, but in particular also strongholds in the parliamentary groups of the CDA and VVD – felt the need to defend approval of Schengen II. Again, their reasoning started from the mental model regarding how to deal with European integration as it had developed in the past forty years and in which the process of European integration was depicted as the way to preserve the prosperity and security in the Netherlands.

The government kicked off by emphasising the pressing argument that approving the agreement was an absolute necessity for the country in order not to lose its status as a trustworthy and loyal negotiation partner. Disappointing the European partners, it was argued, was at odds with the interests of the Netherlands. The State Secretary of Justice, Aad Kosto (PvdA), dramatically stated that even 'doubts about the answer to the question if the Netherlands are willing to join in the international cooperation', could be damaging: 'And that for a country which is so enormously dependent on that international cooperation!'[682] Typically, Kosto spoke of international cooperation, as if not aware that European integration and Schengen as related to this process, could not be seen as just another episode of cooperating

internationally. These complex processes in which regulating competences were conferred on a level of decision making of a higher order, separated from the Member States, implied that it should be assessed and judged differently from traditional forms of cooperation. The fact that Kosto did not address the difference, together with the seeming casualness with which he ranged Schengen II in the political category of international cooperation, seems to indicate a blind spot. For the Dutch governing elite Schengen was just another exponent of the foreign policy ambitions of the country. A too simple perception on which national decision making procedures on European integration were built and which would eventually backfire among the majority favouring progressive European integration.

When Maarten van Traa, a political associate of Kosto, attempted to pour some oil on troubled waters by objecting that France had not been banned from the international stage after the *Assemblée National* had rejected the European Defence Community in 1954, Kosto sharply remonstrated that 'France is a country of an importance somewhat different from a small country in Europe which, with a big air- and seaport, is very dependent on an accessible hinterland.'[683] As usual, the geo-political and trading position of the Netherlands – as opposed to the position of the bigger powers – was adduced as an argument for approving the Schengen Convention.

Fierce support for this view came from the CDA. Approving or rejecting the treaty, Hans Gualthérie van Weezel (CDA) argued, boiled down to choosing between the 'leading group' or 'falling behind with the pack of competitors like England, which, because of its geographical position, finds itself in a completely different situation from the continent of Europe.'[684] Again, the argument in favour of approval was based on the presupposition that the Netherlands, because of its geo-political position, could only lose by rejection of the new agreement. His fellow CDA MP, Jaap de Hoop Scheffer, chose a similar approach, arguing that the Dutch parliament – for the sake of the Dutch interests – should look beyond the provisions of the agreement and any objections that might stem from them: 'Looking at the Dutch interest and the way the Netherlands can be of influence, it is clear that should also play a role when we are going to make a final assessment of Schengen. That, in other words, goes beyond judging the treaty as it stands.'[685] Thus, De Hoop Scheffer tried to take the sting out of the Schengen II implementation convention. In his line of reasoning, the exact content of the agreement was irrelevant compared to the broader political context in which it had come about.

Strikingly absent in these calls for approval of Schengen II were elaborations on *how exactly* the agreement would be of interest to the Netherlands and if and how these interests were of greater value than upholding strong national democratic procedures. This lack of argumentation fitted the Dutch political culture in which the government had structurally been yielded privileges in the field of foreign affairs. The questions if and how the process of European integration qualified as just another process of foreign affairs or of international cooperation, were not asked. In that way, the full implications of calling another institution into being that had competences to rule the citizens of the Netherlands, were not considered in parliament.

The constitutional objections concerning the legal status of the Executive Committee and the Schengen approval procedure were again dealt with in a way parliament had been accustomed to since 1953. In reply to Schutte's objection that the Executive Committee could not qualify as an 'international institution' in terms of Article 92 of the Dutch constitution, the government stated that the Committee should be seen as a 'light international institution', which was – nevertheless – covered by Article 92.

More than being a clear distinction, the introduction of the term 'light international institution' was a convenient rhetorical dissociation,[686] enabling the government to fit the Executive Committee into the template of the Dutch constitution after all and, thus, enabling the government to avert – as Schutte had suggested – approval of Schengen by a special, instead of by a simple majority. Interestingly, by introducing the dissociation, the government departed from the line of argument that it had upheld in its report in answer to the Council of State. Then, it had simply acknowledged that the Committee did not qualify in terms of an international institution, in order to subsequently add that, nevertheless legislative competences could be conferred on the Committee. By now introducing the dissociation mentioned above, the government fortified its position rhetorically.

In contrast with dissociations made in earlier debates on European integration – between the procedures wanted in national and international politics, for instance, or between the literal text and the spirit of the constitution – this particular dissociation was not immediately accepted by parliament. Some wondered what the exact legal characteristics of such an international institution, light version, were and what the differences were with a regular international institution.[687] The government had no clear answer but that this

organisation would not reside in large buildings and would not be supported by a large-scale secretariat. Instead, it would have a lighter structure and be linked to an already existing secretariat.[688] It is perhaps because of these conceptual difficulties of defining a light international organisation, that the government in a later parliamentary meeting came up with an additional argument to prove that the establishment of the Executive Committee could be legitimised on the basis of Article 92 of the Dutch constitution when it stated:

> 'that the legal safeguard with regard to [the] conferral of competences recorded in Article 92, is not due to the circumstance that powers are given to an international institution under international law or in the nature of that organisation, but to the fact that the assignment may only be given by means of a treaty approved by parliament.'[689]

Interestingly, since it brings us back to the constitutional structures set out in the early 1950s, the argument was literally derived from the parliamentary discussion on the constitutional revision of 1953. It shifted the focus for legitimising the conferral of competences from the exact character of the organisation to the approval of the treaty or agreement concerned. In other words, the argument left the character of the Executive Committee to be irrelevant for the application of Article 92. It was a rhetorical invention that justified the disregarding of certain inconvenient elements in the Dutch constitution. To further strengthen its case, the government stated that deviation from the Constitution would only be the case if the Executive Committee would receive the power to take decisions that would themselves deviate from the Dutch constitution. However, this was not to be feared, since such decisions were not only not foreseen in the competences allocated to the Committee, but the promise of the government to inform parliament in advance of the agenda of meetings of the Executive Committee – leaving parliament the possibility to convene a parliamentary meeting in advance of such decisions – would also prevent such decisions from being taken without the knowledge of parliament.[690] This, in fact, was not much more than a mere eyewash, since it was by no means a guarantee that the Executive Committee would never take decisions with constitutional implications.

In spite of the resistance, the government succeeded in meeting its aims. The arsenal of arguments turned out to be enough to convince a majority in parliament that the Executive Committee could be considered to fall within the terms of Article 92 of the

Dutch Constitution and that Schengen II should be approved with a simple majority, in accordance with Article 91, subsection 1. So Gert Schutte's perception of the relation between the Treaty and the Dutch Constitution was rejected. Thus, though harder-won than in earlier years, the Dutch tradition of constitutional openness towards the process of European integration, as it had been growing since 1953, remained intact.

Yet, the tabling and adoption of an amendment introduced by Maarten van Traa (PvdA) and Jaap De Hoop Scheffer (CDA) shows that the political mainstream in parliament was becoming more wary, after forty years of being at ease with the willingness of the government of investing non-national institutions with regulating competences for the cause of European integration. In this amendment to the bill of approval concerning Schengen II, the parliamentary reservation was laid down that a draft of a decision of the Executive Committee was to be made public and presented for approval to the Dutch States-General, immediately after the draft had come about and *before* the government had put its signature under it.[691] The initiators added that also in case a draft-decision had been approved by the States-General, but was again altered in the Executive Committee, a new draft-decision would come about that again needed separate approval of the States-General.[692]

The introduction and adoption of this amendment was revolutionary in the sense that, for the first time in the process of European integration, the Dutch parliament restrained the government in such a clear and unequivocal manner. Although associations might emerge with the Klompé and Blaisse amendments to the Bills of approval of, respectively, the EDC Treaty (1953)[693] and the EEC Treaty (1957)[694], the Van Traa/De Hoop Scheffer amendment was of a different – almost un-Dutch – order. Whereas these historic amendments had 'merely' asked the government to present to parliament implementation agreements following from the respective treaties, this amendment added that the government was not allowed to commit itself to draft-decisions of the Schengen Executive Committee before it had secured approval of the States-General.

By laying down this specific condition, the Dutch parliament broke with the long-standing consensus with a parliamentary majority that the government was to be left free in the process of signing the documents resulting from of international negotiations. It is a clear sign that, by 1990, parliament broadly felt that the process of European integration, and spin-offs such as Schengen, had proceeded to such an extent that stronger national parliamentary control, or legitimisation was desirable. Looking back on the process and referring to the

constitutionally more conscious Germans, the former MP, senator of the PvdA and emeritus professor of Constitutional Law, Erik Jurgens, spoke of a 'breakthrough':

> '[…] then it began to dawn that gradually we were giving away things which – as the Germans would say – conflict with our essential *Verfassungsordnung*.'[695]

Paradoxically, however, the increased possibilities for parliamentary control that this understanding led to was only indirectly insisted on and approval of the Schengen Agreement itself – even via a simple parliamentary majority! – was never in danger. Given the choice between approval or rejection of Schengen II, the political mainstream in the Netherlands, despite its doubts and objections, eventually voted in favour of the agreement. The considerations of D66, which had been in doubt on whether it should approve the accord or not, is illustrative here. Reverting to an old and familiar *topos*, the party eventually concluded that 'there is no alternative.'[696] The support of D66 for the notion that the opening of the national borders was a necessary precondition for reaching the SEA objective of the internal market, and eventually, a fully economically and politically integrated Europe, led to a perception of approval of Schengen as the best option available. The intergovernmental and undemocratic downsides of the agreement were seen as temporary problems that could be overcome in the course of further integration. Thus approval of Schengen II was trusted to be a pragmatic step towards a supranational Europe in which the endangered democratic relations would be eventually restored.

On 25 June 1992 the Dutch Lower House approved Schengen II with a marked majority of 123 against 23 votes. In February 1993, approval – by sitting and standing– followed in the Upper House.[697] It is noteworthy that in both Chambers the votes against the agreement did not only stem from the traditionally euro-sceptical parties, in particular the Protestant-conservatives, but also from parties that had until then been known as solidly in favour of progressive European integration. In the Upper House, for instance, four of the sixteen members of the PvdA voted against the agreement. Among the opponents in the Lower House were members of the PvdA and D66.[698] These results illustrate the friction that started to emerge within these parties with regard to the prospect of further European integration and the role of the national parliament in it; friction that was also at the root of the Van Traa/De Hoop Scheffer amendment.

However, whereas the amendment signified a significant crack in an old political consensus, the mindset it was part of still remained. When it came to the crunch, the broadly shared understanding that the Netherlands should for its own sake continue on the path of European integration and that a Dutch '*Alleingang*' should for the same reason be rejected as a matter of principle,[699] still united a parliamentary majority of over 80%.

5.3 More Cracks Appear: the Treaty of Maastricht (1992)

During the deliberations on Schengen II in the early 1990s, plans for a new European Treaty were well underway again. In a sequence of summits in Dublin (April 1990), Rome (December 1990) and Luxembourg (June 1991) the establishment of the European Monetary and Political Union (EMU and EPU respectively) were discussed. In the weeks before the last meeting, the Luxembourg Presidency of the EEC had presented a draft-treaty to its partners. It introduced the establishment of a European Union based on a so called three-pillar structure.[700] The pillars respectively comprised the EEC (i.e. 'traditional' internal market affairs), the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs. The first would have a community (*communautarian*) set up, whereas the other two would be structured on an intergovernmental basis. This was contrary to the Dutch preference, but yielding national sovereignty in these policy fields was too delicate an issue for most other Member States. In the latter pillars, the European Council was appointed to stimulate and set the general guidelines in the various policy areas.

The Luxembourg plans were greeted with a diversity of reactions. Various supranationally oriented parties to the negotiations, such as the European Commission, Belgium and the Netherlands, objected to a structure with two intergovernmental pillars that were considered to contribute to the power of the national governments at the expense of the position of the common European institutions, the European Commission and the EP in particular. In the Netherlands, an intergovernmental structure was deemed no less than a spectre, since such a design ran counter to the long and widely shared belief that a great amount of power resting with the national governments would, within the European framework, mainly benefit the greater powers such as France, Germany and Great-Britain. Especially in such a crucial field as foreign policy, this was considered to run counter to Dutch interests. The Netherlands, together with the other supranationally

inclined parties preferred a tree structure, 'a tree with three branches',[701] in which the CFSP and Justice and Home Affairs elements of the Union would also be fed by a stem of common supranational procedures.

In addition, there was disagreement among the Twelve on whether the European Parliament should or should not receive the co-right of initiative. The Commission rejected this, since alteration to the traditional procedures would strip this particular institution of its exclusive right of initiative. Greece, Spain, Italy, Belgium and the Netherlands, on the other hand, applauded the extension of competences of the EP.[702] The Dutch supranational ideal presupposed a full-fledged EP.

Because of these disagreements on the set-up of a European Union, the Luxembourg proposal was rejected. However, since the common aim – i.e. the development of the EMU and EPU – was not rejected in principle, the European summit of June 1991 concluded with an optimistic note: the Luxembourg draft would function as the starting point for future negotiations among the Twelve. Little did the Member States know that, in the six months to come, things were to run differently under a Dutch presidency.[703]

Instead of elaborating on the Luxembourg Plan, a group of leading Dutch diplomats and the members of government responsible for foreign affairs – i.e. the Prime Minister, Ruud Lubbers (CDA), the Minister of Foreign Affairs, Hans van den Broek (CDA), and State Secretary Piet Dankert (PvdA) – spent the summer of 1991 designing a new proposal for a European Union, more in line with the Dutch preferences. The initiative can be seen as an expression of the hope and belief that taking a pioneer role in the process of European integration would be beneficial for the country. Or, to put it more down-to-earth, as a typical exponent of the old tendency of the Dutch governmental elite to choose the headlong flight in matters of European integration in order to stay in control.

The result of the Dutch efforts was a draft treaty in which the initial three pillar design had made room for a 'unitarian structure', i.e. a tree with three branches.[704] Supranational ('communautarian') decision making would be the rule in more areas than was the case with the Luxembourg draft. Thus, the Dutch anticipated a great moment in the history of European integration: they would propose their European partners to take the plunge towards truly federal contours of their united Europe. Almost fifty years after the end of World War II, the objective that a Dutch political majority had structurally pursued, seemed to come real close.

Already soon after its presentation in diplomatic circles, however, it became clear that the Netherlands would get a hard time in defending the proposal with the European partners. Many of the Member States indicated to prefer the Luxembourg draft.[705] The Dutch prime-minister, Ruud Lubbers (CDA), his Foreign Minister and State Secretary for European Affairs, for reasons of time-pressure and political credibility, decided to enter into new negotiations with their proposal, notwithstanding the diplomatic criticism.[706]

On 30 September 1991 – 'Black Monday' in the Dutch literature on the subject – the Dutch team in the negotiations saw their worst-case scenario coming true.[707] Apart from Belgium, the Netherlands received no support whatsoever on the European stage. The Dutch plan was brushed aside by the European partners in an unsparing way. The occurrence was experienced and regretted in the Netherlands as a diplomatic fiasco. At the end of Monday 30 September, in the building of the European Council in Brussels, Minister Van den Broek told the Dutch national press that the Dutch had looked like real idiots.[708] The *NRC Handelsblad*, one of the largest Dutch newspapers, phrased it as a 'total humiliation'.[709] These fierce reactions of shame illustrate that in the Netherlands the rejection of the draft was more than merely a political disillusionment. It was received as a blow for the image and reputation of the Netherlands as an esteemed, tactful and practical partner on the international political stage; a reputation that the Dutch political community had tried to build conscientiously and on which it very much liked to pride itself.

After the initial shock, however, there was no alternative for the country but to accept the retreat and to return to the drawing table. Between September 1991 and December of that year, the Dutch presidency went all out to close the semester with a victory. The flop of 30 September had to be forgotten as soon as possible; an instant diplomatic success would considerably contribute to that. Therefore, the Dutch negotiation team went to work with fresh courage in order to be able to surprise international political friends and foes with an acceptable result after all. Since a majority in parliament had declared itself generally in favour of a new proposal to be presented in Maastricht, as it had also felt both the disappointment of the rejection and the urgent need for a new plan, the need for reckoning with possible concerns in parliament regarding a new treaty and its effects on national democracy was in all probability not given priority. Counting on the common Dutch internationalist mindset doing its work, such concerns would most probably not endanger national approval of a new treaty and could therefore be dealt with later.

At the European Summit in Maastricht of 9 and 10 December 1991, the Netherlands then, after all, succeeded in concluding its presidency with a historic agreement. After toilsome negotiations, in which especially the United Kingdom was obstructive on certain points, the Member States came to terms on a new alteration to the Treaties of Rome. On 7 February 1992 the Treaty on European Union was signed in Maastricht. The Treaty of Maastricht, as the Treaty on European Union was soon also called, differed from the earlier Dutch proposal in that it was much closer to the Luxembourg draft. The European Union that was established by it, was given a 'temple structure': the tympanum of the Union rested on three individual pillars.[710] Following the Luxembourg design, the three pillars respectively related to matters concerning the internal market, the CFSP and Justice and Home Affairs. Decision making by means of the community method remained restricted to first pillar-issues and that contained the former EEC arrangements.[711] The concepts of subsidiarity and Union citizenship that had been introduced in the Luxembourg draft, were again introduced in the Maastricht Treaty. Furthermore, the Maastricht Treaty recorded the commitment of the Member States to go along in developing a single European currency – the EMU – and made the establishment of the European Central Bank possible.

The subsidiarity concept established for all three pillars implied that decisions should be taken 'as closely as possible to the citizens'.[712] Its extension and transformation into hard law by incorporating it in the treaty framework was an attempt to create an instrument for dividing up competences to be exerted by the Union and competences to be exerted by the nation state.[713] Union citizenship yielded the citizens of the Member States additional rights on top of their national citizenship, among which the right to travel, work and live wherever they wanted in the EU. To the historical bond between the European Member States and their national citizens, reflected in rights and obligations following from national citizenship, an extra dimension – the European one – was added. Henceforth, national citizens would also formally derive their rights and obligations from a European level of governance. For their money, as well, they would increasingly depend on the European framework. For the Netherlands it meant that the Dutch guilder would eventually disappear as a symbol of national financial independence.

Thus, with the introduction of these new concepts and policy instruments the Treaty of Maastricht was an important step in the process of European integration. Having started out as a foreign policy experiment, Europe to an ever greater extent became a matter of national importance, affecting the national constitutional orders as they

had hitherto existed. Although the term 'federation' was not explicitly used,– in the document the 1957 objective of the 'ever closer union' was adhered to – with the Treaty of Maastricht the federal contours of European unity got in fact clearer-cut.

Position of the government

At home, in line with the attitude as it had existed since the approval of the SEA, the government presented the giant leap of the Treaty on European Union as not much more than a routine matter. It expressed the view that it was in accordance with objectives that had been set earlier and should therefore be approved. It reminded parliament of the information that it had been given by the government in the various stages of the process; various memo's, such as 'Going on Building Europe'[714], 'The European Political Union[715] and 'Memorandum on EPU, WEU and NATO',[716] sent to parliament in the preparatory stage of the treaty, were referred to.

In order to further enhance the treaty's legitimacy, the Lubbers III government pointed out that the Treaty was the solution – or at least a considerable step in the right direction – for solving the democratic inadequacies in the process of European integration, which had been intensely criticised by parliament, especially with the approval of the SEA and Schengen II. The return of that parliamentary complaint as an argument *in favour* of approval of the new treaty, illustrates again how the government skilfully turned concerns of the past into pragmatic arguments for progressive integration. To substantiate its claim, the government referred to the new competences of the European Parliament in the fields of legislation and governance,[717] but also to the introduction of the concept of Union citizenship, the explicit mentioning of European observance of the fundamental human rights and the honouring of the subsidiarity principle.[718] It added that the new treaty offered the prospect of further improvement of the democracy-issue since the document was explicitly aimed at the preservation and development of the common legal order and adopting the concepts of democracy and subsidiarity as guidelines for future development.[719] Another round of negotiations, scheduled for 1996, to which the EC members had committed themselves with the signing of the Maastricht Treaty, was to bring further perfection.[720]

This positive valuation of the changes that the new treaty brought, matched the interest of the government to get the treaty approved in parliament. In line with the presentation of earlier treaties, less attention was paid to shortcomings, vague implications or unforeseeable consequences of the new treaty. Whereas the extension

of competences of the EP was focused on, the restriction on its ability to control many other second and third pillar issues was discussed just as little as the fact that the democratic means of the EP remained restricted to the right to reject a bill in last instance. The limitations of the clarity that the subsidiarity concept was supposed to bring – questions like who was to decide, in what particular cases, whether a task belonged to the Union or to the nation states? – was not elaborated on. Moreover, the difficulties of a European identity with the national citizens – i.e. if such a feeling of connectedness could be created by a treaty and make the concept of European citizenship more than a hollow phrase – were not entered into. In general, it can be concluded from the presentation of the treaty to parliament, that the Dutch government paid no particular attention to the major implications that would come with rigging a, to an ever greater extent, (con)federally structured Europe. With regard to the political interest of the government – a quick approval of the treaty – this is not surprising, but the choice to let these difficult conceptual questions rest also had a long term effect that seems not to have been duly considered. Not talking about these issues, involved the danger of losing sight of their long term importance. The risk of these matters sooner or later backfiring on the political elite as unforeseen or even undesired consequences of the integration process, increased.

Interestingly, and probably due to the fact that the government realised all too well the immense scope of the new treaty, despite its attempts to be casual about it, special and extensive attention *was* paid this time to the relation between the new treaty and the Dutch constitution. Typically, the government again chose the rhetorical strategy of soothing any possible tensions beforehand. First of all, it was stressed that citizenship of the European Union would be complementary and would therefore not interfere with national citizenship.[721] In addition, the government went deeply into Articles 126 and 127 of the EC Treaty in the version resulting from Maastricht that stipulated that the EC would contribute to the development of the quality of education within the Union and decide on actions to reach this goal. The Treaty on European Union was the first official European agreement that allotted a task to Europe in this field. The Dutch government concluded that this was compatible with Article 23 of the Dutch Constitution, which guaranteed freedom of education – i.e. the equal treatment and financing of public and denominational education – in the Netherlands.[722] A fierce political strife between liberal and Christian politicians of more than hundred years – the *Schoolstrijd* – had preceded the insertion of this article in the Dutch constitution in

1917. The underlining of the government that the European Union was not to tamper with this hard won educational freedom of its Christian citizens, reveals an awareness that this might be a breaking point for the Protestant-conservatives, and maybe even for the CDA, in the process of approving the Treaty on European Union.

The government also anticipated parliamentary protest regarding the constitutionality of the monetary arrangements that the Maastricht Treaty introduced. It elaborated on the possibility of a conflict between the Maastricht provisions on the single European currency and Article 106 of the Dutch Constitution, introduced in the Dutch constitution in 1983. The latter stated that 'the monetary system shall be regulated by Act of Parliament.' The government stressed that this provision was by no means to signify that the national legislator was obliged to maintain a *national* monetary system; implicitly again an interpretative dissociation between a national and an international order that was not made explicit in the literal text of the constitution. Article 106 of the Dutch constitution, according to the government, was not to be interpreted as an obstruction to European integration, it merely guaranteed that national legislation was to be developed in order to introduce a European monetary system.[723] To substantiate this statement, the government concurred with the words of the former Minister of the Interior, Hans Wiegel (VVD), who in the parliamentary discussions on the last constitutional amendment of 1983 had expressed governmental consensus on this matter.[724] The then cabinet had even stated literally that '[This] stipulation […] [can] not be seen in any way as a constitutional obstacle for any future European development.'[725] What had been stated back then, the Lubbers administration reasoned, still applied in 1992.

The government reached a similar conclusion on the Maastricht Treaty provisions on immigration and asylum.[726] Article 2, subsection two, of the Dutch Constitution, stating that the admission and expulsion of aliens should be regulated by Act of Parliament, did not prohibit adjustment of national arrangements to a common European policy. It only required that such adjustments should be based on a national act.[727] Ultimately, then, the government concluded that none of the provisions of the Treaty on European Union required deviations from the Dutch constitution. For that reason, in accordance with the Dutch tradition of constitutional openness *vis-à-vis* the process of European integration as it had developed since 1953, the text was presented to parliament for approval by a regular parliamentary majority following Article 91, subsection 1 of the Dutch Constitution.[728] In accounting for this choice, the government referred, as usual, to

Article 92, which provided for the conferral of legislative, governmental and legal competences on international institutions.

The detailed opinions on the various provisions, however, indicate that now that the process of European integration was observed to interfere to an ever greater extent with policy areas hitherto strictly dealt with within the national domain, even the government saw the need of further explanation of how this process was to be reconciled with the Dutch constitution. Perfect harmony between the two political orders could no longer be taken for granted. The fact that, in the end, the government felt free to conclude that there were no incompatibilities between the two orders, is indicative, firstly of how open the Dutch constitutional order had become – the text of the Dutch Constitution left ample room for such an interpretation – and, secondly and more importantly, of how it still counted on a majority consensus in parliament that would endorse this interpretation of openness.

In its argumentation, the government could fall back on the conclusions of the Council of State. Surprisingly, considering its fierce concerns on Schengen and, earlier in history, the EEC Treaty, in its advice on the Maastricht Treaty, the Council had not extensively entered into constitutional matters. It had asked the government to clarify its point of view on the legal position of the Union in comparison to the former European Economic Community and on the relation between Article 106 of the Dutch constitution and establishment of the EMU – requests that the Dutch government complied with in the explanatory memorandum – but had not come up with a competing view on the reconciliation of the treaty with the Dutch constitutional order.[729]

It was a remarkably relaxed attitude, especially when compared to the reaction of the German *Bundesverfassungsgericht* to the Treaty of Maastricht. In its *Maastricht Urteil* of October 1993, the German Constitutional Court felt the need to emphasise that, also after the entering into force of the Maastricht Treaty, the legitimacy of the integration process would be based on the sovereignty of the Member States. Application of European law by German lawyers, the court therefore stated, was ultimately effected on the basis of the national German constitution. The lack of any such consideration in the advice of the Dutch Council of State is telling for the difference in the constitutional culture that existed between the two countries. The national constitution of the Netherlands is generally interpreted as to be far more flexible towards the wider world, than that of Germany.[730]

So with regard to the basic principles of approval, the government was supported by the Council of State. The consistent pro-European

course of the coalition parties CDA and PvdA – in 1992, together these parties held a majority of 68,7% in the Lower House – was another factor that contributed to the likeliness that the Treaty of Maastricht would be smoothly approved in parliament.[731] There was, however, one political rub that the government needed to reckon with. In the autumn of 1991, the new party leader of the VVD, Frits Bolkestein, for the first time openly denounced the pursuing of the European federal ideal in parliament. These were remarkable words from the lips of the political leader of the VVD; a party that – just like the PvdA, and CDA – had adhered to the federal ideal since the early 1950s.[732] His political turn might be explained in more than one way. It was a strategy perhaps to politically adapt to the growing democratic concerns of European integration after Schengen and to the post-Black Monday reality in which the term 'federation' was more and more avoided in the Netherlands. It could also be seen as a Thatcherian stance with its stronger focus on the costs of the process or, more specifically, as an assimilation to the national public debate in which, from 1986 onwards, a focus emerged on the far-reaching consequences and possible downsides of the process of European integration for the national domain.[733] In any case, Bolkestein's remark was an indication that the political reactions towards progressive European integration were becoming more unpredictable. The old story that said that European integration, by definition, served Dutch interests and should therefore be supported, had lost its self-evidence within the national political domain. By all means a relatively new development, that the government had to reckon with in the approval debate.

Another new and remarkable development that would turn out to have an impact on the course of the parliamentary debate on the Treaty of Maastricht, was the rise of a scholarly discussion about the constitutional effects of the agreement. The significance of the Treaty of Maastricht for the national (constitutional) order was especially noticed among Dutch public intellectuals. In March 1991, even before the Treaty of Maastricht had been signed, the influential Dutch legal expert, Ad Geelhoed, had characterised the process of European integration as a 'process of legislation as far-reaching or almost comparable with a process of constitutional legislation.'[734] Contrary to the traditional point of departure of the political majority that more integration would benefit the influence, and therefore also the interests, of the Netherlands, Geelhoed argued that a situation was developing in which 'decisions are taken on the Netherlands, but partly without the Netherlands.'[735]

In June 1992, the period in which the government presented the treaty to parliament, a debate among Dutch constitutional experts developed in their professional journal the *Nederlands Juristenblad* (NJB), on the question whether the Maastricht Treaty was as compatible with the Dutch Constitution as was contended by the Dutch government. Commenting on the plea of the government in the explanatory memorandum, the expert in comparative constitutional law Aalt Heringa (1955-) kicked off the discussion by stating that the provisions and objectives of the Treaty on European Union conflicted with Article 106 and Article 2, subsection 2 of the Dutch Constitution. The first of these articles stated that the 'monetary system shall be regulated by Act of Parliament' and had been added to the Dutch constitution in 1983 by means of the amendment proposed by Wöltgens et al.[736] At the root of its insertion had been a debate between parliament and government on the possible development of a future European Monetary Union. With this article, Heringa claimed, the initiators had intended to guarantee that the national legislator was to decide in case the process of European integration would result in fundamental changes of the national monetary system. In relation to Article 2 of the Dutch Constitution, which stated that 'The admission and expulsion of aliens shall be regulated by Act of Parliament.' Heringa's argument was similar: 'an assignment to the (national) legislator [seems to me] incompatible with a conferral on an international institution which can decide on the subject with a (qualified) majority.'[737] On the basis of these arguments he argued in favour of approval of the Treaty of Maastricht with a two-thirds majority of the votes cast, in accordance with Article 91, *subsection 3* of the Dutch Constitution.

Heringa's careful phrasing gives the impression that he himself was careful with regard the tenability of his argument. When seen in the light of the Dutch tradition of relatively easily giving way to Community Law in general, and conferring competences on the European level in accordance with Article 92 of the Dutch constitution in particular, this caution seems sensible. The tension between Heringa's conclusion and the Dutch internationalist constitutional tradition was also observed in the reaction of Marten Burkens, Professor of Constitutional Affairs and former sous-chef of the department of Constitutional Affairs of the Ministry of the Interior.[738] Referring to the work of the constitutional expert and former MP for the VVD, Pieter Oud, he concluded that on the basis of Article 92 of the Dutch Constitution 'The legislator can assign the competences he has to an international institution.'[739] This observation was not unconditionally

compatible with Heringa's conclusion that 'everywhere where a constitutional stipulation explicitly requires action of the legislator an assignment of powers as meant in Art. 92 is contrary to that stipulation'[740] Burkens gained support of various Dutch legal experts, but also Heringa's view was – to a certain extent – endorsed by some.[741] The divergent reactions show that even Dutch constitutional experts could, or were not willing to agree on how to interpret the Dutch constitution on this point. It is telling for how elusive the Dutch constitutional provisions had been set up. And for lack of the existence of a Constitutional Court, the discussion needed to be settled in parliament. There, without a doubt, political instead of legal considerations would be decisive.

Debate in parliament

Probably grown wise by the Schengen-experience, the Treaty of Maastricht was instantly recognised in the Dutch Lower House as grand and special. Already in the written preparatory phase of the approval procedure in parliament, hundreds of questions were levelled at the government.[742] In order to get a grasp of the exact meaning of the provisions of the Treaty, the permanent parliamentary committee on EC-Affairs even summoned a special expert-meeting. Here, the 'European of the first hour' Edmund Wellenstein, the first Dutch Advocate-General at the ECJ (1981-1985) Pieter VerLoren van Themaat, the President of the Dutch Central Bank (DNB), Wim Duisenburg, and professor of monetary economics Eduard Bomhoff, were invited to assist parliament to get a grip on the text of the treaty and its implications.[743] The complexity and comprehensiveness of the document resulted in a lengthy plenary debate.[744]

Apart from the widely shared view that Maastricht was an important qualitative step on the path to European integration, parliament was divided in the appreciation of its content. Being generally positively inclined towards further integration, the CDA, PvdA, D66, VVD, and GroenLinks – a majority of over 95%! – welcomed the treaty in principle, as a new step in a desired direction. The various parties valued various aspects of the agreement. The realisation of the EMU in particular was appreciated by the liberal VVD for its economic advantages.[745] The intensification of cooperation in the fields of environment and social affairs was especially valued by GroenLinks.

The differences in appreciation of the various parts of the Treaty, equally resulted in diverging disappointments with the various political parties. For all the good things that the VVD saw in the development of the EMU, it could also mention as many dangers and concerns.[746]

GroenLinks commented that, to its taste, the emphasis of the Treaty was too emphatically and one-sidedly on economic integration: 'The intentions in the field of environment and the social dimension poorly compare with that.'[747] The CDA, although explicitly advocating progressive European integration, was not too keen on the expansion of activity of Europe in the fields of education and culture, for the party was anxious about infringement of the rights of denominational education.[748] Within the PvdA, disappointment existed with regard to the complexity of the treaty on the one hand and its half-heartedness on the other. Erik Jurgens, who by then had become an MP for the PvdA, indicated that he would have preferred a 'constitution' 'in which the rights and duties are clearly expressed'.[749] A constitution, Jurgens believed, would appeal more to the citizens of Europe than the not very consistent treaty text that had been produced now. According to him, this treaty was not much more than a pile of amendments referring to the previous treaties.

It is an interesting remark, since Jurgens was the first to bring up the concept of a European constitution in parliament as if it concerned a feasible objective within the actual political reality of the integration process. With his observation that a constitution would have been a preferable step, Jurgens referred to the plans of Spinelli and Colombo of the 1980s, which in his view had been a useful initiative in that direction.[750] His remarks show that he perceived the reality of European integration to have developed to such a level that it legitimised a coherent constitution. This, what could be called, 'constitutional awareness' of Jurgens, remarkably, connected him to some of the fiercest political opponents who turned out to hold similar constitutional associations with the new treaty and the state of the integration process. Their argument, however, took an opposite turn. Whereas Erik Jurgens longed for a formal European constitution to come into being, as far as the GPV was concerned, from a material point of view, the Maastricht Treaty was just that. The Christian-reformed party judged the Treaty to be 'nothing less than a fundamental constitutional revision of the European Community.'[751] The comment shows that this party already interpreted the European legal order as a constitutional order, and – consequently – the new treaty as an essential adaptation to it. Without expressing itself explicitly in favour or against the Treaty of Maastricht, the GPV wondered whether parliament realised that with the request for approval of the text, the States-General of the Netherlands were asked to take one of the most important decisions of the political history of the country. 'For, much more than is the case now, adopting the treaty and the included competences and the far more comprehensive

Community law, will be constituent for the national political organisation of our country.'[752]

The Protestant-conservatives of the GPV, SGP and RPF, disapproved of the intention to develop a common policy on what they judged to be 'subjects touching on identity' such as education, culture and healthcare.[753] Since these parties saw no 'material demand' – a *'zakelijke vraag'* – for such forms of common policy, they were of the opinion that the European Union overreached its *raison d'être* with the Treaty of Maastricht.[754] As they had always done, these parties sharply contrasted forms of economic integration, which they believed would indeed benefit the Netherlands to all other forms of integration that transcended this objective and, by consequence, gnawed at the political sovereignty of the Netherlands. They remained true to the presupposition that a sharp distinction between economic and political integration was possible and that integration in the field of economy did not necessarily have to spill over to the field of politics.

Contrasting their view with that of the political advocates of progressive European integration who, with European integration progressing, seemed to feel the need for including more and more policy areas, it can be observed that 'the true character' of the process of European integration – i.e. its objective, functioning, chances, limitations, etcetera – was still essentially contested on the conceptual level. A European Union was coming into being, but what it was and exactly implied, no one in parliament completely comprehended.

The involvement of Europe in educational matters in particular, led to protest with the Protestant-conservatives. Due to the *Schoolstrijd*, earlier mentioned in this chapter, these parties strongly associated the policy field of education with their group identity as Dutch Protestants and the striving of this group for equal rights. They feared that the possibility of the European Union influencing the education programmes of the Member States might interfere with these historically acquired rights.[755] Changes in the equal treatment of denominational schools and state schools as guaranteed by Article 23 of the Dutch Constitution was especially feared. Senator Egbert Schuurman (RPF) drew attention to the possible endangerment of this special Dutch system: 'Our order of public and denominational education is not met with elsewhere in Europe and for that reason Brussels may well overlook specific characteristics.'[756] Notwithstanding the earlier described attempts of the Dutch cabinet in the explanatory memorandum to soothe these parties with regard to the scope of the objectives of the European Union in this field, the GPV, SGP and RPF

feared the consequences of European involvement for their singular position within the Dutch educational system.

One of the other proposals in the Maastricht Treaty these parties especially disliked was the introduction of the EMU. Monetary integration clearly signified a break with the concept of state sovereignty: 'In the monetary field the Netherlands completely loses its sovereignty in an EMU.' With this step, so it was reasoned, the country would also lose control over the monetary policy it was committed to: 'It is true that in return it gets some voice within the EMU, but as a small country we will pull little weight there.'[757] With this statement, the traditional thesis of the Dutch political mainstream that more integration would benefit the smaller countries, was – once again – attacked.

In addition, the Protestant-conservative parties also expressed their concern on the implications of the introduction of the subsidiarity principle. They posed the question of who would determine what was exactly to be done by who. Whereas subsidiarity had been presented as an instrument to balance the competences of the European and the national level, they feared that eventually the notion might stimulate a further *im*balance. When in political practice the term would be explained in accordance with the Roman-Catholic administrative interpretation – the doctrine from which the term stemmed originally – the SGP contended that the distribution of competences would be decided on the central level.[758] This might have a centripetal effect, so it was argued, leading to an ever more powerful Union.[759] For these parties the subsidiarity principle was a Trojan horse: 'It is a centralistic principle with the appearance of the opposite.'[760]

The reconcilability of the new treaty with the Dutch constitution was an issue that loosened tongues throughout parliament, with advocates and adversaries of the integration process alike. The contentions of Aalt Heringa et al in the *Nederlands Juristenblad* had caught on in parliament. Whereas CDA, VVD and D66 only in the preparatory stage of the debate had asked the government to respond – in general terms – to the concerns of Heringa *cum suis*, the PvdA and GroenLinks took their time in expounding on their views. The PvdA emphasised that it considered a debate on the constitutionality of the Treaty highly important 'lest afterwards the reproach may come that on approval insufficient attention has been paid to this question.'[761] It is a remarkable comment, since for a long time this party had not explicitly cared much for the constitutional concerns in parliament regarding new European treaties. Adding it to the constitutional remarks of Jurgens and the GPV, and the profound realisation following

from implementing Schengen that the process of European integration deeply interfered in the national domain in more and more policy areas, it shows a growing constitutional awareness within the Dutch parliament in relation to the process of European integration.

Concretely, the PvdA entered into the constitutionality of the transference of monetary sovereignty to the European Union. The party saw an incompatibility, but a slightly different one from Heringa's:

> 'Our constitution is silent about the economic or monetary system to be adopted by the government. On the contrary, the budget right of the Chambers is expressly not limited in this regard. But the EMU-regulations of the Treaty and the relevant Protocols do limit it to a certain degree. Is this perhaps a question of infringement on a constitutional right, that is to say the right [of the States-General] to choose in freedom which economic and monetary policies must be pursued?'[762]

Whereas Heringa had based his contention on Article 106 of the Dutch constitution – i.e. the article that the government had also based its defence on in the explanatory memorandum – the PvdA grounded its question on Article 105. The article concerned the national right of parliament to approve the budget.

GroenLinks also attacked the government's view that the provisions of the Maastricht Treaty did not deviate from the Dutch Constitution. But this party followed Heringa's analysis:

> 'the handing over of authority to the European Community on visa policy and on monetary policy is not in agreement with the Dutch Constitution, because in that it is laid down for both items, that the Dutch legislator must take care of these matters. At any rate that in the Dutch law the foundation must be laid for regulations and decisions on these items.'[763]

The entering into force of the Treaty of Maastricht signified for GroenLinks that the Dutch legislator lost its decision making power in both policy areas and became the mere 'executor' of decisions taken in Brussels. For this reason, the party argued that approval of the treaty by a simple parliamentary majority in accordance with article 91, subsection 1 of the Dutch constitution was not appropriate.[764] It should be done – at the very least – by a qualified majority of the States-General. However, approval of the Treaty through direct participation

of the Dutch people by means of a referendum was considered best. A motion to this end was proposed.[765]

Apart from its relevance for revealing the constitutional way of thinking behind the attitude of the Dutch parliament in European affairs, this remark is noteworthy for another reason as well. For the first time in the Dutch history of the European project it was proposed to present a treaty on European integration to the Dutch people for approval. Whereas in other European Member States – Denmark and Ireland, for instance – constitutional traditions existed in which a popular referendum was an option, the Dutch constitutional tradition in which even parliament, as history had shown, preferred the shortest possible way when dealing with new European treaties, was miles away from an approval procedure in which the nation's citizens would be directly involved. Since 1797, the Netherlands had not witnessed a national referendum.[766] In this regard, the suggestion of GroenLinks implied a clear break with almost two hundred years of constitutional thinking in general, and with the Dutch constitutional approach regarding European integration in particular.

This was exactly what the party aimed at. Now that European integration affected the national domain in ever more policy fields to an ever greater extent, the party felt that the Netherlands should develop an approval procedure befitting the importance of the process. It shows the presence of a notion that European integration had developed to such an extent, that any further progress should be linked, somehow, to the will and voice of the Dutch people. The growing constitutional importance of Europe, so it seems to have been realised, needed a legitimisation, different from and beyond the one the Dutch constitutional procedures could offer. GroenLinks, not surprisingly, considering their aversion of progressive European integration, found support with the Protestant-conservative parties, even though, instead of a referendum, they preferred approval by a two-thirds majority in accordance with Article 91, subsection 3 of the Dutch Constitution.[767]

Although for the parties of the political mainstream the introduction of a referendum – implying a break with their usual practice since 1953 – or requiring approval with a qualified majority, was still a bridge too far, these parties shared some of the concerns of GroenLinks and the Protestant-conservatives. The increasing imbalance between the ever greater influence of Europe and the open attitude of the Dutch parliament until then *vis-à-vis* the process of European integration contributed to concerns on the democratic relations within the European Union. A concern that was strong anyway, because the

Treaty of Maastricht did not bring the desired improvements in the structure of the European framework.

Since the approval procedures on the SEA and Schengen II, the parliament had been held out the prospect of strengthening the democratic calibre of the integration process. Now that the Treaty on European Union was actually there, advocates and antagonists of progressive European integration were equally disappointed with the measures the treaty introduced in this respect. The parliamentary concerns mainly focused on the two intergovernmental pillars of CFSP and Justice and Home Affairs. *Communautarisation* of these policy areas had failed to materialise, which meant that the European Parliament would still not be able to democratically supervise decisions in these fields. The actual measures taken to enhance the involvement of the EP were judged to be not much more than empty shells. Complicated procedures in which proposals were to be sent back and forth between all separate European organs, led the parliamentarians of D66 to conclude that 'the influence of the European Parliament [will] be hardly visible, because the procedures are so complicated.'[768]

Now that on the European level sufficient restoration of – what was now called – Europe's 'democratic deficit' failed to occur and Europe's competences only increased, more and more Dutch MPs deemed it necessary for the *national* parliaments to get more intensively involved in the process of European integration.[769] The GPV was rigorous in its judgment, stating that the Netherlands should get rid of the 'undisputed axiom' that reduction of the democratic deficit was only possible by extending the competences of the EP.[770] The national parliament, it insisted, should claim the competences of democratic control that belonged to it.

The shift in the mindset of the Dutch parliament towards the idea that stronger democratic control was needed, as it had occurred in the process of approving Schengen II, made itself felt again in this approval debate regarding the Maastricht Treaty. Similar to the Van Traa/De Hoop Scheffer amendment that had been passed in the process of approving the Schengen implementation agreement, an amendment increasing the involvement of the national parliament was also introduced with regard to the bill of approval of this treaty. It was an initiative of René van der Linden (CDA), Jaap de Hoop Scheffer (CDA), Erik Jurgens (PvdA) and Maarten van Traa (PvdA), but in the course of the debate VVD, D66, GroenLinks, GPV and SGP joined in.[771] The amendment created a national democratic check on European decisions related to Justice and Home Affairs (Title VI of the Maastricht Treaty). It required approval of the Dutch parliament before the government could

approve a European decision that had come into being under this title. On 12 November, the Lower House adopted the motion.

The extension of the parliamentary control mechanism, introduced for the Schengen cooperation, to acts adopted under the third pillar of the Treaty of Maastricht signified that this well-nigh un-Dutch measure of enhanced parliamentary control was now officially introduced in the process of European integration. Within Dutch diplomatic circles, the former civil servant in the Ministry of Foreign Affairs, Jaap de Zwaan, recollects that this development aroused dismay:

> 'Foreign Affairs strongly disapproved of this: […] Schengen is intergovernmental, whereas the EU is a supranational layer of governance which does not allow the creation of too many national supervisory mechanisms. […] By doing so its effectiveness is hindered […].'[772]

It illustrates the breach the amendment implied with regard to the old convention between Dutch diplomats and politicians that the national parliament would keep its hands off the process of European integration. It also shows that in diplomatic circles, characteristically for Dutch foreign affairs traditions, stronger parliamentary control was explained as going against the process of European integration instead of contributing to it. Looking back, De Zwaan declared in 2011:

> 'We [within the Foreign Affairs Ministry] realised insufficiently that the Justice and Home Affairs pillar contained a number of emotive and politically sensitive subjects – the right of asylum, the right of immigration, fighting criminality – in which the EP was hardly involved […]. With hindsight I agree with that. But there you are again, you just hurtle on.'[773]

The remark illustrates how in the Foreign Affairs mindset in these years, there was little room for considering the positive effects of stronger control of what was decided and happening on the European level. Stronger democracy was seen here as a problem, rather than a solution for the future of European integration.

One of the reasons that the amendment was supported – even initiated! – by parties very much in favour of progressive European integration must be sought in the fact that, within these parties, the notion started to sink in that until then the national citizens had not displayed a great interest in, let alone enthusiasm for the process of European integration. On the contrary even. As far as a debate in the

wider Dutch society had developed, it was to an ever greater extent characterised by the presence of critical comments. As referred to earlier in this chapter, in the national public intellectual debate on European integration a current was developing that focused on national identity. Identification with Europe, by contrast, was lacking. Erik Jurgens (PvdA) considered this a problem. He argued in parliament that 'the political integration requires […] identification with Europe'[774] Similar to the MPs of GroenLinks, who called for a national referendum on the Maastricht Treaty, the PvdA thought the ever increasing level of European integration needed popular legitimisation, which could not be found within the familiar constitutional structures. The beginnings of the notion that a truly integrated European (constitutional) order needed popular legitimisation – the notion that resulted in the referendum of 1 June 2005 – was already present here.

This view was shared by others. Parliamentary-wide it was seen and acknowledged that outside the domains of politics and policy, Europe reaped scorn rather than praise. René van der Linden (CDA) spoke of a 'very large gap' between European integration as it was looked at within the political domain and the way the citizens perceived it:

> 'The remarkable thing is that we must conclude that many of the things causing us to be faced by great problems at the moment, such as the flood of aliens and capital crime, are laid down by the citizens at Europe's door, whereas we [a majority in government and parliament] say: we can solve this by way of Europe'.[775]

GroenLinks, most clearly, connected the alienation from Europe that seemed to be present among the Dutch citizens, to a solution by changing the approval procedure. Going with its own proposal for a referendum, the party claimed that only informing the Dutch people on the effects of Maastricht was too little:

> '[…] explain, explain, and explain again! I still hear State Secretary Dankert saying it. But a treaty with major shortcomings as regards content will never convince […] Democratic control, social and ecological dimension, they are matters that concern people.'[776]

If fear in the Netherlands existed of 'a bigger association on which you have no hold, of an anonymous bureaucracy, far away, without a recognisable human face' then this fear should find its way out by means of the explicit involvement of the people of the Netherlands

in the decision making process; i.e. by means of a referendum, if this party were to choose.[777] Strikingly, again a link was expressed between further integration and popular legitimisation.

From defence towards consensus

In reactions to all the doubts and questions that the Treaty on European Union had raised in parliament, the government stuck to its familiar ways. It stressed once again that the process was good for the Netherlands and that – therefore – the new treaty deserved, just like the earlier treaties, parliament's support. The *topos* of the Netherlands being a small country was again referred to. The Minister of Foreign Affairs, Hans van den Broek, claimed particular benefits of further integration for such countries. The extension of decision making by QMV to increasingly more policy areas for instance, would benefit Dutch influence: 'the votes of the smaller countries then […] carry a weight that is more advantageous than solely mathematically justifiable on the basis of the number of inhabitants.'[778]

It was the old argument, based on the foreign policy conviction that since the start of European integration in the early 1950s had been one of the motivations for the Dutch stance in the process: on its own, the Netherlands would only be able to play a minor role, whereas the framework of European integration offered the country the setting to extend its influence beyond its territory. At the same time, however, this attitude implied that an essential characteristic of the process was ignored. In its persistence to see European integration as a form of international politics, the Dutch government failed to recognise that this process could – especially in the post-Maastricht era – no longer be seen as just that. With the SEA approved, the Schengen process well on its way and the European Union on the verge of being founded, Europe extended its influence deeper and deeper into issues that had until then been cherished as the prerogative of the nation state. Monetary policy and calling into existence of direct legal relations between Europe and its citizens by means of the concept of Union citizenship, are only two examples. The implications of *de facto* establishing a European federation – the signing of the Maastricht Treaty was a further defining moment in this respect – for the Dutch state and its national interests were *not* clear in all respects. So, whereas the government kept founding its argumentation in favour of progressive European integration on old presuppositions, their realism could be increasingly called into question.

The fact that the government displayed no eye for issues like the ones mentioned, even after it had introduced an even further-reaching

proposal than eventually signed in Maastricht, is indicative again of the blind spot that seemed widely present within the Dutch political elite, in which the unique and far-reaching implications of the European integration process were still overlooked. Of course, it must also be noted that the government had a particular interest in preserving the picture that European integration was not essentially different from other foreign policy objectives. It had a lot of freedom to lose in its acting on the European stage if it would confirm parliament in its concern on European integration having progressed to such an extent that stronger parliamentary, let alone, popular control was necessary. Therefore, downplaying the importance of the treaty and the changes it introduced, was from the perspective of political strategy, the convenient thing to do.

This consideration might very well have been at the root of the Lubbers II administration's performance in the plenary debate on the Maastricht Treaty. Here, the government was vague on the future objective of European integration. When asked where this Treaty on European Union would eventual lead to, the government did not come with a clear answer. Minister Van den Broek, for instance, said about the path of integration '[…] the final stage or the ultimate model, is open for us.'[779] In the run up to Maastricht, Prime-Minister Ruud Lubbers was even more superficial in his description of the future:

> 'What exactly is that political union? I myself think it a rather ambitious word. […] It is a kind of process you are working on in a certain phase. I would like to emphasise this process-character. […] I think we should not be occupied with the description of the final phase […].'[780]

Given the new political climate, in which concerns as to the future were increasingly clearer expressed by an increasing number of parties, it is likely that political opportunism was the basis for turning a blind eye to the ultimate consequences of the path that had been entered. Or as Hans van den Broek himself – maybe even more sincerely than he intended – put it: 'The clearer you want to make the line, the greater the chance that Europe will not come about.'[781] As if he claimed that being too explicit on where the process would lead, especially in this new, decisive phase, was only likely to mobilise opposition. Admittedly, it can also be assumed that the government itself was not genuinely able to exactly predict how matters were to develop after the entering into force of the Treaty of Maastricht. More than it presumably realised, the government

strongly depended on the will and wishes of the other Member States; a group that was only to grow in the next couple of years.

Not surprisingly in the light of the purport of the explanatory memorandum and the general tendency of the government to downplay the implications of the treaty, it trivialised the constitutional implications of approval. Again, the interpretation applies that this was to the political benefit of the government, which worked towards a quick approval of the treaty. With regard to the typically Dutch principle of freedom of education as laid down in Article 23 of the Dutch constitution, the cabinet pointed out that Article 126 and 127 of the Maastricht Treaty strongly confined the competences of the Union by binding it to fully respect the responsibility of the Member States in this field. It was added moreover, that on the basis of the indicated provisions, the Union received no regulating competence: 'only the possibility of taking incentive measures is offered.'[782] Therefore, the national constitutional guarantees protecting freedom of education in the Netherlands would 'in no way' be affected. The government, however, remained silent on how it would be able to guarantee this. With the future of European integration being unclear and the piecemeal dynamics of the process in mind, the long term value of such guarantees was rather uncertain. In the political reality of November 1992 it was only relevant that parliament would accept the argument for the time being.

With regard to Article 106 of the Dutch constitution, – the article that stated that the monetary system is provided for by an Act of Parliament – the government judged that the conclusion of Heringa and GroenLinks concerned 'national legal competence regulations which are not in the way of the assignment of competences by virtue of Article 92 of the Constitution.' When interpreted in line with 'the system of the Constitution and the whole history of the coming about of the provision', the government stated that this conclusion was the right one.[783]

In the argument it remained unclear what the Dutch government actually defined as the history of the coming about of the Dutch constitution and how the preferred interpretation was legitimised on the basis of which historic constitutional episode exactly. However, the argument was rhetorically useful since it suggested an unequivocal intention behind the Dutch constitutional system that was conducive to the progress of the process of European integration. In fact, the argument shows that the tradition of constitutional openness had become a *topos* in itself, on the basis of which the government was able

to defend further stretching of the Dutch constitution at any convenient moment.

With respect to the concern of the social-democrats that because of the EMU the Dutch political community was no longer able to freely choose its national economic and monetary policies, the government commented that there were no grounds for that fear as long as the Maastricht Treaty was constitutionally approved according to article 91, subsection 1: 'Government and States-General also retain in that case their constitutional competences in the fields mentioned, such as determining the budget by virtue of article 105, part one of the Constitution.'[784] It was added that it was to be expected that, after the entering into force of the Treaty of Maastricht, it would be possible for parliament to make new choices when exerting its competences in economic and monetary policy. But, the government assured, 'such a development has not a harmful effect on constitutional rights but fits within the framework of the Constitution.'[785]

Although the analysis of the government might have seemed tenable at the time, again the question is justified how it could guarantee that an intrusion into the fundamental rights of the Dutch parliament in budget matters would not happen in the future as a belated and unforeseen consequence of the Maastricht Treaty? With today's knowledge, it is clear that the government could not give such guarantees. The Eurocrisis eventually moved elements of the various national parliamentary budget rights to the European level of decision making and – who knows now? – more will follow. However, in 1992 the Euro was not a reality yet and comprehending how the EMU provisions would exactly work out was no sinecure. Seen from that perspective, the government was free to give promises at their own discretion.

In the discussion on the constitutionality of the Maastricht Treaty, an additional argument in favour of approval was sought and found in the Brinkhorst motion, adopted in the process of revising the Dutch Constitution in the early 1980s.[786] It stated 'that in case of doubt the provisions of the Constitution should be explained in such a way that they do not obstruct the European integration process.'[787] Having been adopted without much debate in the national parliament, the political significance and usefulness of the motion only became clear with the approval of the Treaty of Maastricht, where it offered the government an elegant argument to end the discussion on the constitutionality of the Treaty. It made further debate on the relation between the Treaty of Maastricht and article 106 of the Dutch Constitution in essence redundant.

What all arguments of the government on the constitutionality of the Treaty of Maastricht had in common was that they built on the old consensus that the Netherlands should be as open as possible towards the process of European integration. This consensus, in its turn, had its roots in the conviction that the process was needed to secure the economic and security interests of the Netherlands. What the arguments did not reckon with was that, now that the process had entered a new phase, one in which the sweeping consequences of European integration started to make themselves felt more and more noticeably, the issue of democratic legitimacy of the process – in terms of the involvement of parliament and national citizens – inevitably presented itself as a theme and was to become of increasing importance. It was exactly this issue that, in 1992, started to put the old constitutional consensus under pressure.

Yet, in the course of the parliamentary debate it turned out that the old consensus was still strong enough in order not to endanger the approval of the Treaty on European Union. D66 supported the stance that the Brinkhorst motion made any further debate on the constitutionality of the treaty redundant.[788] Erik Jurgens (PvdA) added that due to the revision of the Constitution of 1953, violation of the sovereignty of the Netherlands – as a consequence of the establishment of the EMU and EPU – was not at all related to a violation of the Dutch constitution: 'So the EMU violates our sovereignty – a somewhat mythical, 19th century national concept – but not our Constitution.'[789] He stressed the democratic legitimacy of the system by pointing out that a 'an overwhelming majority' had chosen for this system in 1953. Jurgens did not enter into the argument of Eimert van Middelkoop (GPV) that it was not necessarily logical to apply the way of thinking of 1953 in 1992, since the historical circumstances in general, and the scope of the integration process in particular, had drastically changed since then.[790] As objections of opponents of the Treaty remained restricted to the parties traditionally critical of progressive European integration – mainly the Protestant-conservatives and GroenLinks –, its approval in accordance with Article 91, subsection 1 was never in danger.

Also in its reaction to the suggestion of GroenLinks to organise a referendum on the treaty, the government relied on the historical consensus on the interpretation of the constitution. It emphasised that the instrument of the referendum did not exist within the Dutch constitutional system.[791] In addition, it explicitly called on parliament to 'stick to our own culture and traditions' in approving the treaty.[792] It was a clever rhetorical anticipation of the growing focus on the preservation of national identity and traditions; a tendency that after

1990 had been spreading into the wider debate on European integration in the Netherlands.[793]

The rhetorical strategy of the government to focus on preserving and following constitutional procedures was continued when it distanced itself from the Danish way of dealing with the approval of the Maastricht Treaty. After the negative outcome of the Danish referendum on the treaty on 2 June 1992, this country had asked for specific safeguards regarding the EMU and the continued existence of Danish citizenship next to the introduction of the European citizenship. On 11 and 12 December the European Council had deliberated on this in Edinburgh, in order to give Denmark the guarantees it needed to present the Treaty a second time for approval to its people. On this course of events, Lubbers remarked:

> 'That country wants to deal with the treaty in a specific way: very carefully. […] In that country the citizens are apparently very worried about the meaning of the treaty.'[794]

With this remark, Lubbers widened the distinction between the Netherlands and Denmark in their dealing with European integration, and implied that the Dutch government was not willing to let in doubts. Lubbers' remark on Denmark shows that he and his administration paid no particular attention to the growing concerns within Dutch society. If it rested with the Dutch government, the Netherlands, a traditionally reliable country when it came to European affairs, would not engage in – what was referred to in Dutch diplomatic circles as – 'Danish commotion [in Dutch: *Deense toestanden*].'[795]

Illustrative for how the Netherlands was keen on avoiding a delaying fuss in the approval procedure of Maastricht, is the recollection of the former Director-General of the Dutch Ministry of Foreign Affairs, Ronald van Beuge. After the summit of Edinburgh of December 1992, he, together with his services and in close contacts with their German equivalents, drafted a declaration for their respective national parliaments in order to convince these institutions that, despite the extra Danish guarantees, a new approval procedure was not necessary in the Netherlands and Germany: '[it is] important to note that the Danish prime minister Schlüter has confirmed to be of the opinion, together with the other governments, that the arrangements made, do not entail alterations of the Maastricht Treaty on any issue.'[796]

Also with regard to the rejection of a referendum, the arguments of the government found consent with the parliamentary majority. In a fairly early stage of the approval procedure, Joost van Iersel (CDA) had

already commented that 'there was no reason whatsoever to get excited about the Maastricht Treaty.'[797] As far as he could see, the approval of the Treaty was to proceed according to the Dutch practice: 'On the basis of our Constitution and the consequential legal provisions we are going to proceed the way we have been used to.'[798] The VVD and PvdA agreed with this view. So, in spite of the growing dissension, when all was said and done, these parties stuck to the business as usual approach they had been familiar with since the early 1950s.

Interestingly, even general and widespread democratic concerns in parliament do not seem to have been taken too seriously by the government. The Lubbers administration felt the democratic deficit to be exaggerated by parliament:

> 'Now that the subject is democracy, I have to say that I am definitely somewhat annoyed at the quickly uttered wording that the voters have not been able to give their verdict or do not give a verdict. Is that really true? I refer to the election programmes of our political parties. Do they not include the course they want to adopt in Europe?'[799]

The Minister of Finance, Wim Kok (PvdA), reminded parliament that it still had a final say in approving the Treaty of Maastricht: 'On the merits the States-General here and now have the final say […]'[800] It was a somewhat defiant statement, challenging parliament to put its money where its mouth was , i.e. to break the old consensus on the desirability of progressive European integration, in case their concerns were too great.

Remarkably, but maybe because it realised that after Schengen II parliament was not to be easily put off this idea, the government indicated not to have any fundamental objections against an amendment resembling the Van Traa/ De Hoop Scheffer amendment. Whereas it judged prior permission of parliament in case of treaties to be at odds with the 'constitutional division of tasks between parliament and government', it said there were no objections on their side against such prior permission in case implementation agreements following from the treaty were concerned.[801]

In conclusion, as with all earlier treaties on European integration, the advice of the government to parliament was to approve the Treaty of Maastricht. Old promises and spectres were revitalised in order to convince parliament of the importance of approval. Progressive European integration in general was once again characterised as a 'a necessary good'.[802] Rejection of the treaty was depicted as heralding

catastrophes. Prime-minister Lubbers reached deep in his rhetorical purse when speaking of 'substantial risks' and 'substantial arrears' that would befall the Netherlands 'when it is going to be again every man for himself.'[803] He warned of 'renationalisation and depreciation.'[804] Referring to the extensive interests of the Netherlands abroad, Foreign Minister Van den Broek argued, that without the treaty it remained to be seen whether the country would be able to 'throw its weight into the scale and to make its influence felt with which we can indeed reach our goals.'[805] Both reactions are similar in that they presented the rejection of the Treaty of Maastricht as ruinous for the wider Dutch interests in an international context.

Typically, despite the many complaints and objections that had been uttered, also by the parties of the political mainstream, when it came to the crunch, these parties still supported the view represented by the government. Erik Jurgens (PvdA) pointed out that 'disintegration' as a consequence of rejection of the Treaty 'would be highly undesirable', especially in the circumstances of the early 1990s, with the new free states in the eastern part of the continent waiting for accession.[806] In order to enforce his argument, Jurgens chose to use a heavy rhetorical weapon: 'Let Europe not suffer the fate of our own Republic of the Seven United Provinces.'[807] By applying this historical analogy of the decline of the Dutch republic in the 17th century, he called to mind the spectre of the country losing its wealth and influence – once again – in case the process of European integration would fail. In other words, approval of the treaty was equated with a prosperous European nation in a prosperous European continent, whereas rejection of the document was associated with the decline of the Netherlands and Europe as a whole.

The CDA as well framed approval of the Treaty of Maastricht as a precondition for keeping both Europe and the Netherlands on their feet, for 'stagnation in a unification process means decline.'[808] It was the introduction of the metaphor of the cyclist that should keep pedalling in order not to fall. In answer to the question of SGP senator Driekus Barendregt whether it would not be better to perceive a united Europe in terms of a convoy of twelve vessels, instead of one ship with twelve captains, Rinse Zijlstra (CDA) pursued the war analogy by saying: 'Suppose it depends on his [Barendregt's] decision if this bill is rejected or not', Zijlstra started, '[…]Would he today then shoulder the responsibility to vote against the treaty, knowing that the convoy, like in the Second World War, would be scattered and consequently be torpedoed one by one?' [809]

In this line of argumentation, similar to the historical analogy that Jurgens applied, failure of the Treaty of Maastricht was directly put in line with failure of the process of European integration as a whole. It was a convenient choice for the advocates of the treaty, who had an interest in stressing the great importance of its approval. With its opponents, however, this representation led to resistance. Especially GroenLinks – the political party that regarded itself, in principle, positively inclined towards European integration but cherished strong objections with regard to the Maastricht Treaty – reacted with irritation. 'The question "Maastricht: yes or no?" is prematurely and unnecessarily made into "Europe: yes or no?"'[810] The members of the party indicated that they wished not to be placed in that dilemma.[811] The party had fundamental concerns on the democratic relations within the Union in the making and was of the opinion that with the signing of the Treaty of Maastricht the government had broken the promises that it had made in this respect with the approval of the SEA:

> 'Certain central things that should have been settled at last, which we were promised in 1986 already, have not been settled. That must not be dismissed by saying that if you do not support the treaty, a full-blown disaster is in the making.'[812]

The party concluded soberly: 'If the treaty should not come about, there will be a new start. It will be two more years before there is a new treaty indeed, but there will be one after all.'[813] In line with this argument, GroenLinks decided to reject the Treaty of Maastricht.

The party was right in its observation that the causal relation between rejection of the Treaty of Maastricht and the demise of Europe was not elaborated on by the advocates of approval. They had used it as a *topos*; an old commonplace on which consensus on the need for progressive integration could be built. The fact that the argument did not work for the, in principle, moderately pro- European integration party of GroenLinks can be seen as an early indication that this *topos* was becoming outworn. It reflected the cracks that had slowly, but clearly, appeared in the traditional widespread consensus on progressive European integration as it had characterised the Dutch political domain since the early 1950s.

On 12 November 1992, the Dutch Lower House cast its vote on the Treaty on European Union. With the CDA, PvdA, VVD and D66 voting in favour, it was adopted whereas the other parties rejected it. On 15 December 1992, the Treaty was adopted in the Upper House without a vote. It led Ina Brouwer, the leading lady of GroenLinks in the Lower

House to conclude that the liberal merchant had beaten liberal Lady Justice.[814] When confronted with a choice between keeping up with the international partners or strictly maintaining democratic principles, a majority of the Dutch political community still gave priority to the first option.

5.4 Stuck between Widening and Deepening: New Accessions (1995)

With the entering into force of the Treaty of Maastricht in January 1993, a period of preparation for new treaty negotiations began. Article N, subsection 2 of the treaty stipulated that in 1996 an intergovernmental conference was to be summoned in order to further develop the issues that could not be settled in Maastricht. Before such a treaty revision, however, another priority had to be dealt with: new candidate members were waiting at the door.

The requests for the accession of Austria, Sweden, Finland and Norway had already been filed in the run up to the entering into force of the Treaty of Maastricht.[815] But because the Twelve had feared endangerment of their objective of deepening the integration process at the time, going into these requests had been delayed. Now that the European Union had come into being, the project of expanding the Union got attention again. It was even considered convenient to get the accession done *before* the new IGC would lead to an amendment of the Treaty on European Union. Thus, the new Member States could be presented the 'completed' *acquis* as had been agreed on in Maastricht, before it was reshuffled again in a new round of negotiations. After a positive advice of the European Commission (20 April 1994) and a vote in favour of the accession by the European Parliament (4 May 1994), the Council of Ministers agreed on the accessions on 16 May 1994. Subsequently, on 24 June 1994, the agreement between the EU and the four candidate members was formally signed.

The position of the government

In September 1994, the first cabinet led by the Social-Democrat Wim Kok (1994-1998), presented the bill of approval for the accession of the four new members to the Dutch parliament.[816] It asked parliament to approve it in accordance with the traditional procedure of Article 91, subsection 1 of the Dutch constitution. Similar to the earlier rounds of accession in 1973, 1981 and 1986, the government stressed the positive consequences of the accession for the Netherlands. With the new Member States being considered northern countries with kindred

views on important political issues, the accessions were expected to benefit the Netherlands in terms of economy and political-strategic position. First of all it was contended that, due to the expansion northward, the Netherlands would find itself in a geographically central position, which was likely to be to the advantage of the export possibilities of the Netherlands.[817] Secondly, the government reckoned, since the new Member States would, similar to the Netherlands, belong to the group of smaller and middle-large countries of the Union, the political importance of this group within the Union would grow. Concretely the government argued that after the accession the Netherlands would stand stronger in its political wishes regarding trade policy with eastern Europe, European development cooperation and European environment- and health policies.[818]

The arguments reveal that the Dutch government, like in former days, before the Mediterranean states of Greece, Spain and Portugal had joined the European Communities, again tended to think of Europe in terms of a northern and a southern part, with both having distinct characters and interests. In this dichotomy, the new Member States were, together with the Netherlands, classified as belonging to the northern part. The exact differences between these countries, their views on international politics and their interests were not identified. It is telling for how the government tended to see the process of European integration to be about interests and alliances – it essentially still viewed the process as a foreign affairs undertaking – instead of (also) analysing how these markedly different countries, with their own histories and constitutional orders would fit into the contours of one, unified European federation. Austria, for example, had recorded permanent neutrality in its national constitution in 1955.[819] How such a constitutional starting point related to plans for developing a unified European defence was not considered by the government.

The Council of State made up for this tendency of looking at the matter one-sidedly by putting question marks at the beneficial effects of the accessions for the Netherlands. By drawing attention to the long experience that these candidates had with intergovernmental cooperation and their lack of experience with the supranational model of European integration, the Council claimed that the net result of the accession might well be the enhancement of the intergovernmental current within the Union. Such a development, the Council pointed out, might complicate decision making in the Union and was moreover 'at odds with the Dutch tradition of striving for the coming about of a *communautarian* structure.'[820]

Debate in parliament

Among the MPs of the PvdA, CDA and D66 such effects of the expansion were considered negative for the ideal of a supranational Europe, an objective these parties had consistently strived after. If the contentions of the Council of State made sense, then the expansion signified getting into an awkward predicament between their traditional conviction that the Union should not develop into a closed fortress on the one hand, and the chances of reaching the ultimate goal of a supranational Europe on the other. That is why the main theme of the parliamentary debate got concentrated on the question of expansion versus deepening of the Union.

Following the Council of State, advocates and opponents of progressive European integration alike wondered whether a 'federal Europe' would still be viable after the accession of the four new members or if this aim would be a thing of the past then?[821] CDA and D66 in particular wondered whether it would actually be realistic to expect that the new Member States would adjust themselves to the supranational way of decision making.[822] Especially with regard to the development of a common CFSP, the parties doubted the feasibility of reaching agreements after the new countries had acceded. Or in the words of the MP Bob van den Bos (D66): '*Communautarisation* of foreign policy […] seems, with the new expansion, farther away than ever.'[823] With regard to defence, similar comments were made. André Rouvoet, MP for the RPF, wondered how the Austrian constitutional principle of '*immerwährende dauernde Neutralität'* was to be reconciled with the accession of the country to the military cooperative body of the Western European Union and the aim of the European Union to come to a common security policy.

From defence towards consensus

The reaction of the government to these questions can be popularly characterised by trying to keep the holes plugged. It was stressed that only the accession was stake. The deepening of the Union was a concern for the future, which would only come under discussion again when the negotiations on a new treaty would take place in 1996.[824] With regard to the Austrian constitutional neutrality, the State Secretary charged with European Affairs, Michiel Patijn (VVD), tellingly remarked that this neutrality principle had its roots in the Cold War setting. Now that the East-West relations had changed, the message rendered to the Dutch parliament was that the neutrality issue might well be less of a political obstruction for Austrian accession.[825]

More than anything, this viewpoint shows how the Dutch governmental elite tended to see constitutional restrictions: as obstructions for political objectives, which might be removed in due course. Soothingly, the government furthermore referred to the 'sophistication and the political tradition' of the 'Nordic countries' in taking a constructive stance in matters of foreign policy and could therefore be trusted to show a positive attitude concerning Europe. Thus, in line with how earlier governments had dealt with the threat of diversification of the integration process, the government again tried to rhetorically iron out any perceived differences between the Netherlands and at least three of the four candidate members.

Also in line with the earlier accessions, the antagonists of further integration positively welcomed the complications for the process of deepening European integration that might follow from the expansion. Indeed, they did not wish deeper integration at all. Moreover, they welcomed the new round of accessions from an identity point of view. After the accession of the Catholic Mediterranean countries, the accession of the four candidates was – to the satisfaction of these parties – perceived to shift the balance towards a more Protestant character of Europe.[826] Since these parties had always preferred widening to deepening, there was no dilemma for them; they would vote in favour of the accession.

The advocates of progressive European integration had to vote on the matter in favour, despite the tension they saw emerging between widening and deepening of the Union. The debate does not reveal much on the arguments that led these parties to vote in favour despite the downsides that were foreseen. After the noncommittal response of the government, not even a second term was asked by the MPs. It is an indication that notwithstanding their concerns, the parties of the political mainstream had made up their mind on the accession of the four candidates already before the parliamentary debate took place. The traditional loyalty of these parties to European treaties already signed by the government, is likely to have played a role here. Just like the political tradition of voting in favour of an open Europe and the fact that – different from the accession of Greece, Spain and Portugal – no fundamental identity problem was seen with regard to the accession of these countries, which, in terms of preferences and interests, were believed to match the Netherlands relatively well.

On 17 November 1994 the Dutch Lower House decided positively on the third accession since 1973, without a voting by call.[827] Approval in the Upper House followed on 13 December. Here, the Act was adopted even without a preceding debate.[828] In between the approval of

the Dutch Lower and Upper House, a negative result of a referendum in Norway (28 November 1994) decided that this country would withdraw itself from the process of accession. On 1 January 1995, Sweden, Finland and Austria became the latest members of the European Union; a Union of fifteen countries then. For the time being, the tension present with a parliamentary majority, between widening and deepening of the union had been neutralised again. The question was: for how long? The European Union was about to move on again in terms of policy harmonisation. Sooner or later, identity issues would become topical again.

5.5 Concerns Growing Ever Deeper: The Treaty of Amsterdam (1997)

On 17 June 1997 the heads of state and government of the fifteen European Members States, prepared for yet another historic event in the history of European integration. In Amsterdam – again the Netherlands had the privilege of hosting the event as President of the European Council – they met for a two day summit intended to reach a new political agreement after two years of preparation and negotiation. A common approach in issues such as the eastward expansion of the Union, the further development of the EMU, the fighting of international crime and terrorism and the restoration of the ecological equilibrium were the subjects of the summit. Moreover, the institutional basis of the Union was to be further developed and improved.

On 18 June the representatives of the governments of the fifteen Member States reached an agreement on the draft of a new treaty. On 2 October 1997, the Treaty of Amsterdam was eventually signed.[829] The agreement was an amendment of the Treaty on European Union and could therefore only be understood in relationship to that document. The Amsterdam Treaty has been criticised for indecisiveness on all the difficult issues.[830] The problem of how to reconcile future deepening and widening, the composition of the European Commission in an ever larger Union and the extension of QMV of decision making to more policy areas, were important institutional issues that, again, were put off to a later moment.

The new Treaty did bring important changes, however, in the field of involvement of the EP. After the coming into force of the treaty, the European parliament became co-legislator in, for example, the fields of environment, foreign aid and social policies. Moreover, Article F, subsection 1 of the Treaty on European Union,[831] which had

already contained a reference to the fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), was altered in the sense that the second subsection of the provision assigned the Union the task to protect these fundamental rights. Indeed, protection of these rights had been acknowledged for a long time already by the jurisprudence of the ECJ, but the introduction of the rule that respect for the principles as laid down in Article F was a condition for accession and the imposition of sanctions for grave and continuous violation of these rights, were important novelties.[832]

In addition, the treaty added principles and responsibilities to the authority of the Union in the CFSP area. The 'framework decision' was introduced as a legal instrument to reach a minimum level of harmonisation between the legislation of the Member States in the fields of criminality and terrorism.[833] Such framework decisions obliged the Member States to convert their content into the national legislation. Last but not least, the tasks of the Union in the field of the free movement of persons, asylum and immigration were transferred from the third (intergovernmental) pillar of Justice and Home Affairs to the first, supranational EC pillar. It was also decided that the Schengen *acquis* would be incorporated into the European Union. With these changes, the competences of the European Union, were again – slowly but steadily – enhanced. The changes in the fields of foreign, asylum and immigration policy contributed to an increasingly statelike character of the Union.[834]

The position of the government

Because of its interest in getting the treaty approved, the presentation of the Dutch government focused on the successes of the negotiation process. In the explanatory memorandum, in reaction to the growing concerns on the democratic calibre of the integration process, it qualified the document as a 'step forward to a more democratic, more vigorous Europe that had come closer to its citizens.'[835] The government acknowledged that, although not much had been reached with regard to the institutional adjustments that were needed to expand the Union, the existing institutional framework had certainly been improved. In general terms, the government praised the improvement of the decisiveness. To this end the subsuming of the visa, asylum and immigration policies under the EC pillar was referred to.[836]

Important was 'the strengthening of democratic and legal control and of the principles of openness of government and of subsidiarity' that the Treaty was said to bring.[837] In concrete terms, the government

referred to the extension of the right of co-decision of the European Parliament.[838] The treaty strengthened the role of the EP *vis-à-vis* the Commission and the Council and thus met the earlier objections of the Dutch parliament regarding the uncontrollability of the governing institutions of Europe. The further development of the subsidiarity principle was another change that the government emphasised in order to overcome the concerns in parliament regarding the element of democracy. It was stressed that Article 5 of Protocol no.7 of the Treaty gave 'guidelines for judging if things can be done better on a European level than on the level of the Member States'[839] With the explicit reference in this article to the 'constitutional framework' of the Member States, it was, according to the government, 'implicitly admitted that the principle of subsidiarity may result in certain problems being best solved on a regional or local level.'[840] A clear indication, possibly given in anticipation of concerns on an ever more powerful Union, that certain competences would continue to rest with the Member States.

Also with regard to worries on the absence of involvement of the national citizens in the integration process, the government claimed that the Treaty of Amsterdam brought improvements. Via the new Union competences in the fields of employment, social affairs, environment and public health, the government claimed 'the Union is brought closer to its citizens.'[841] The more impact the Union had on the life of citizens, the closer it would be experienced by the citizens, it seems to have thought. That this correlation would not necessarily be positively experienced by the national citizens, was not considered at all.

Similar to the presentation of the Treaty of Maastricht, the government stressed that it had informed parliament on the progress of the negotiations throughout the preparatory phase of the Treaty. Between November 1994 and February 1996, five different memoranda had been dedicated to briefing parliament on the plans for expansion of the Union, the development of the Common Foreign and Security Policy, cooperation in the field of Justice and Home Affairs, institutional reforms of the Union and its own priorities in the IGC.[842] Moreover, the government explicitly pointed out that representatives of the European Parliament had taken part in the meetings of the Reflection Group and that in various instances the Council of Ministers and the various Ministers of Foreign Affairs had deliberated with delegates of this institution.

The comments come across as attempts to remind and convince parliament of how democratically transparent the procedure leading to the Treaty of Amsterdam had been. They indicate that the government

was aware of the stronger focus of parliament on democratic procedures in the process of European integration. The Van Traa/De Hoop Scheffer amendment, as proposed in the Schengen II approval procedure, and its successor in the process of approving Maastricht, had not fallen on deaf ears.

Returning to an old, pre-Maastricht trend, the relation between the Treaty of Amsterdam and the constitutional order of the Netherlands was not given any specific attention. The Kok administration presented the document for approval via the standard procedure of article 91, subsection 1 of the Dutch constitution. This time, the Council of State had no objections.[843] The Treaty of Amsterdam did not add competences to the Union directly affecting the Dutch constitutional order. The comment of the Council concerning the rather optimistic presentation of the government of the treaty – the Council was not sure that the Treaty would really bring the expected improvement in the (democratic) functioning of the Union – were never likely to form a serious barrier to getting the treaty approved in parliament. In the plenary debate the advice of the Council of State did not play any significant role.

Since the approval of the Maastricht Treaty, the viewpoints of the Dutch political parties had not changed fundamentally with regard to the process of European integration. The CDA, PvdA and D66 still belonged to the vanguard of supranational thinkers. After Bolkestein's turn in the earlier 1990s, the VVD did not express itself any longer in favour of a federal Europe, but the party did not have objections against supranationalisation in certain policy areas. GroenLinks had remained critical on European integration, in particular with regard to democratic aspects and typically 'green' themes such as environment, but did not reject the integration process itself. The Protestant-conservative parties (SGP, GPV, RPF) remained true to their anti-integration views and had meanwhile received support, albeit of a markedly different ideological background, from the ultra-left Socialist Party (SP) which, although established in 1972, had entered the Lower House not before 1994. Within this spectrum of parties and viewpoints, the balance still tipped in favour of the avowed pro-integration parties (CDA, PvdA, D66), which held a 63,3% majority in the Lower House. Adding the 31 seats of the (coalition party) VVD, this majority was even 84%. Seen from the perspective of this political division, the government did not have to worry too much about the approval of the Treaty of Amsterdam.

Individual public intellectuals and governmental advisory bodies in the Netherlands, however, were becoming increasingly critical of how the process of European integration was proceeding. In 1997,

the Dutch Advisory Council on International Affairs (AIV), a new independent advisory organ for the States-General, came with the view that 'the lack of sufficient democratic control […] [remains] a serious defect in the institutional organisation of the Union.'[844] The early 1990s public intellectual focus on national identity, moreover, had remained and the arguments of those that pleaded for dropping the ideal of supranational integration gained strength and public hearing.[845] Pim Fortuyn, a sociologist and columnist who contended that the European order had to remain founded on independent nation-states, was to get more and more influence in the public debate and soon also in Dutch politics.[846] Contrary to this tendency, the Dutch government wanted approval of a new, supranationalising treaty.

A special constraint: the Securitel Affair (1997)

One particular constraint for the government in the approval debate in parliament was a question very much in the news and exposing the radical consequences of European integration for the national domain: the Securitel-affair. The affair, which can be marked as a firm reality check for the Dutch parliament on the effects of integration, had its origin in the Securitel judgment of the ECJ of 30 April 1996. It had judged that national rules, of which the European Commission had not been given notice in accordance with the European Notification Directive 83/189, were not legally valid.[847] More than a year later, in early June 1997, an article in the Dutch weekly Elsevier revealed that the state of the Netherlands had on a large scale omitted to meet the obligation set by this directive.[848] It implied that numerous rules – three hundred and sixty-eight according to the first estimations – existed in the Netherlands that could, retrospectively, be judged invalid. This was feared to have severe implications for the legal certainty of Dutch citizens. Moreover, the issue showed an underlying problem: after fifty years of progressive European integration the Dutch legislative system was still not adequately equipped for effectively integrating European legislation into the national system. Although the negligence of the Netherlands had been noted before in diplomatic circles and even the Dutch parliament had known in general of the difficulties of keeping up with European directives since the 1980s, the publication in Elsevier was crucial for showing the legal scope and consequence of European integration and making them known to a wider public.

On 11 June 1997, four days after the publication in Elsevier, the Lower House met. Then a hundred parliamentary questions on the matter had already been sent to the Dutch government.[849] The political parties showed reactions of a similar nature in that they all regarded the

general pro-European stance of the successive Dutch cabinets since the 1950s incompatible with what had happened with the implementation of the Notification Directive. One example of this is the comment of Van Middelkoop (then GPV) in which he summarised the surprise of many:

> 'Can the minister explain why, of all countries, a country like the Netherlands, which at the time belonged to the Europe of the six, that a country well-known for its legal traditions and which has always lived so close to Brussels, has obviously failed especially on this issue?[850]

The parties were united in their judgment of the situation. Even the staunch Protestant-conservative antagonists of European integration cried shame on the government and the legal disorder that had emerged through this Dutch inattention: 'rules are there to be observed, even if they are EC rules'[851] It shows how widespread the image was shared of the Netherlands as a loyal partner in European integration and the extent to which the Securitel issue was perceived as a break with that.

Not surprisingly, the parties wary of further integration seized the moments of disregard of the European rules of the various governments to, once again, stress the, what they perceived to be, undesired consequences of the integration process. The GPV, for example, emphasised:

> 'that the legislator increasingly runs the risk of being of no account […], the Dutch judge in the last resort is no longer allowed to reach an independent judgment on legal questions concerning the reconcilability of national and community law and citizens have to be prepared that in an increasing number of cases there may be doubt about the legal validity of Dutch legislative and administrative measures.'[852]

This line of argumentation led the party to conclude once again that the traditional axiom 'that building that Europe coincides with serving the Dutch national interest'– for years on end employed by the Dutch pro-integration camp to defend the process of European unification – needed to be seriously nuanced.[853] The Securitel-affair offered the perfect occasion for the opponents of further integration to point out the downsides of the process. And as such, it was also a perfect occasion of highlighting these to the wider public in the Netherlands.

The cabinet and the parliamentary advocates of European integration alike, could not but admit that the Netherlands had been negligent, that the mistakes would be repaired and that the Securitel-affair should be seized as a moment of awakening to a start of a process of improving harmonisation between the national and the European level. The Minister of Economic Affairs, Hans Wijers (D66), remarked that 'In the sphere of legislation a sweeping change of culture […] still has to be made.'[854] State Secretary of European Affairs Piet Dankert (PvdA) had concluded earlier 'it just has to get through to the political culture, also in the departments, that laws cannot be made without looking at the same time at what is already present in Europe.'[855]

Inspired by the consistent pro-integrationist attitude of the Dutch political majority, in the aftermath of the parliamentary debate on the Securitel-affair, a 'repair operation' was set up with the goal of containing and repairing the damage done and to prevent such a thing from happening in the future. A new coordination structure was established within the system of the Dutch ministries, in which the Interdepartmental Commission on European Law should keep track of the developments within the various departments. This one-sided focus on repair, instead of fundamentally debating the extent to which the Netherlands desired the process of European integration to interfere with the (legal) sovereignty of the national judge and government, is illustrative for how the political majority in the Netherlands approached the process: the way it had done ever since the earliest European treaties. Instead of fighting further legal integration, the Netherlands preferred an attitude of compliance. It was the result of the strong conviction, even with the parties opposing European integration, that the Netherlands should stick to the European commitments it had entered into in the past and the belief with its political advocates that this would ultimately benefit the Netherlands.

It is important to point out that the laxity of the Netherlands may in the first place also be attributed to the majority mindset on European integration. The tendency of the government of dealing with the process as a foreign affairs issue, benefitting the foreign affairs interest of the Netherlands, resulted in a general neglect of the implications of the process for the national domain; the legislative process in particular. This was ingrained even in how the Netherlands had decided in 1953 to deal with the process from a constitutional perspective. Securitel made the consequences of this approach more visible and tangible than ever. The way the affair was dealt with within the political community is illustrative for how deep-seated the Dutch political traditions on dealing with European integration still were.

Only one week after the parliamentary debate on Securitel, the summit in Amsterdam took place. The parliamentary debate on approval of the Amsterdam Treaty was held against the background of complaints on the democratic aspects of the Union in the aftermath of Schengen and Maastricht, the public debate on European integration growing negative and the 'repair operation' that had been started after the Securitel-debate in parliament.

Debate in parliament

The parliamentary reactions to the Treaty of Amsterdam were outspokenly critical. The text was generally qualified as highly complex – '150 pages of concrete', incomprehensible for the citizens of Europe – and not in correspondence with the goals that had been expressed in advance.[856] Over 400 parliamentary questions had been posed only in the run up to the plenary approval procedure of the treaty. Various MPs complained that little of the Dutch (supranational) objectives that had been set out in the preparatory memos had been realised.[857] A clear choice between the intergovernmental and supranational path was lacking. On the contrary, even within the framework of the Union elements of both these basic structures were to an ever greater extent mixed. It led various parliamentarians to the fundamental question: what was the process of European integration coming to?[858]

Much of the criticism on the contents of the treaty focused on the democratic calibre of the Union. In accordance with the promises of the government in the approval procedures of the SEA and Maastricht, parliament had hoped for substantive improvements in the democratic relations within the Union. Indeed, with the Treaty of Amsterdam the EP became co-legislator in certain policy areas. However, whereas the competences of the Union in matters regarding Justice and Home Affairs (i.e. immigration and asylum) had been extended considerably, the EP had not been given additional competences in these crucial areas. This led parliamentarians to attack the element that the government had hailed as being the ultimate element of progress of Amsterdam: improvement in the democratic functioning of the Union.

The CDA was unusually bold in its judgment. It emphasised that without full co-decision in the areas of justice and police affairs – policy fields that had been moved now to the first, supranational pillar – the power of the European Union as a whole, and of the European Council in particular, could not be democratically controlled on a European level. It considered this to be 'contempt of the importance of parliamentary control.'[859] The party drew its

conclusions: as long as the EP was not given the full right of co-decision, the national parliaments should take their responsibility.

Suiting the action to the word, the MP Hans van den Akker (CDA) proposed an amendment to the bill of approval that extended the right of the Dutch parliament to approve of draft-decisions – 'before any decision-making on it takes place' – in the fields of justice and police affairs; Title IIIA of the Treaty of Amsterdam.[860] In essence, the amendment was a new version of the Van Traa/De Hoop Scheffer amendment that had been introduced in the approval procedure of Schengen II and adopted again – albeit in a somewhat different form – in the parliamentary debate on the Treaty of Maastricht.[861] Just like these earlier amendments, the revision proposed by Van den Akker was aimed at controlling 'the venom of the effect' of the new treaty.[862] It was unanimously adopted in the Lower House.[863] It is a clear indication that the growing concern of parliamentary control was increasingly shared.

Probably grown wiser by the Securitel experience, it is striking that various parties in the Lower House became more aware of the implications of the new treaty for the legal certainty of the Dutch people. Owing to that awareness, questions followed regarding the concrete legal consequences of the treaty provisions. The PvdA, for instance, together with the VVD and D66 had a question with regard to the introduction of the new legal instrument of European 'framework decisions'. What were the consequences of not-converting their contents into the national legal order? 'Can on this point action be taken by the Commission, the Council or another Member State? […] Can citizens derive rights from it? Could this be a question of unlawful action by the government by virtue of the omission of conversion?'[864] The questions boiled down to whether the Netherlands could be reprimanded by the European institutions for not converting European framework decisions, even if – following the national legal and constitutional order – the country was not allowed to change the rules as proposed by the EU. Ultimately, then, the question was if national citizens could appeal to a framework decision when a matter was taken to a Dutch court.[865]

It should be observed that these questions did not fundamentally interfere yet with the old consensus among these parties that the Netherlands should stick to its constitutional openness. Following the line of judgement of the Council of State, parliament made not much of an issue of the constitutionality of the Treaty of Amsterdam. The suitability of approval in accordance with Article 91, subsection 1 was never fundamentally contested. It shows that despite its growing

concerns regarding the democratic calibre of European integration, parliament still upheld the tradition of constitutional openness.

A difference with earlier approval procedures, however, was that to an increasing extent it was realised in parliament that this typically Dutch constitutional way of dealing with European integration was fragile now that the EU had grown into an impressive legal and political entity. This is illustrated by the following remark of a Professor of Constitutional Law, Erik Jurgens, who had become a senator for the PvdA in 1995:

> 'If I should go to the trouble to find out where in the Treaty of Amsterdam further sovereign powers of the Netherlands are conferred on European institutions, it might lead to discussions here on the question if that does not need a two thirds majority. I will not do that, but it does indicate that our dealings with Europe take place on an unstable basis'[866]

The comment beautifully demonstrates the dilemma that was increasingly felt in parliament: letting progressive European integration pass loosely on considerations of political instrumentality or strengthening the grip by breaking with the tradition of constitutional openness. The dilemma followed from the basic paradox that characterised the Dutch position in the process of European integration: in order to survive the Netherlands needed to a merge into a supranational European union. It is relevant to mention that Jurgens's comment forms the prelude to a plea for a stronger constitutional basis for dealing with European Treaties in the Netherlands, i.e. the explicit recording of the Dutch membership of the European Union in the Dutch constitution.[867]

From defence towards consensus

In its reaction to the parliamentary questions and complaints regarding democracy, the government adopted a calming attitude and pointed to the future for the current dilemma's to be solved. Again it claimed that with every new step in the process the institutional framework could be refined: 'the treaty of Amsterdam is not a thing in its own right. It is part of a continual process of continuously building Europe, of constitution building. That process is continuing.'[868]

It was an argument of succession, turned into the pragmatic mantra that the treaty currently at issue was not the end of the road and that shortcomings could only be repaired along the way towards further integration. The explicit use of the term 'constitution building'

is remarkable. It shows that the Dutch government felt secure to express that building Europe was essentially building a constitutional order. Although explicit federal-rhetoric was no longer employed, by referring to a European process of constitution building, the increasing statelike character of the European Union was thus recognised, approved of and – from a constitutive rhetorical point of view– also built further; an anticipation in various forms of a path that was about to be entered after Amsterdam.

With regard to the concerns on the introduction of framework decisions, the Dutch government emphasised that these only legally bound the Netherlands in terms of an end goal: when the Netherlands would not reach the goal as had been set in the framework decision, the country failed to meet its obligations. Eventually, in case of such failure, it was conceivable that the European Commission or the Council would reprimand the Member State and/or would take it to the ECJ. However, the government emphasised, since the framework decisions would not have direct effect, a national citizen would not be able to appeal to such a decision before a national court.[869]

Following the process-character of European integration, the government emphasised that ratification of the Treaty of Amsterdam could not wait. 'First things first, ratification first and thinking meanwhile about the preparations for the following steps', because, Kok claimed, 'marking time' would signify 'a step backwards.'[870] Again, the government linked its actions to the familiar (rhetorical) paradigm that moving on was good. Unlike in the years before 1980, but in line with the approval processes of Schengen and Maastricht, the importance of acting *now* was emphasised. Delaying matters was explicitly portrayed as harmful; an indication that the government felt the need for raising pressure in order to see its goal – treaty approval – to come within reach.

In parliament these creeds served their purpose. Notwithstanding their fundamental concerns, the parties of the political mainstream were still convinced of the absolute necessity of approving the Treaty of Amsterdam as soon as possible. True to the long existing mindset of the political majority regarding European integration, these parties saw the approval of the treaty as a historical imperative. Without any further rationalisation of where this sacred duty came from, D66 stated that 'we must go on and on on the road we have taken since the war.'[871] Perseverance on the path towards a united Europe was also preached by the CDA: 'It was not finished yet and it is not finished yet. That is why we must go on building it […].'[872] Since the end goal was not defined, the argument was empty but irrefutable at the same time.

On 5 November 1998, the PvdA, VVD, D66 and CDA approved the Treaty in the Lower House. The opposition, by then consisting of the GPV, SGP, RPF, GroenLinks and the SP, could do little else but reconcile themselves to the adoption of this new European Treaty. But they expressed their disappointment clearly: 'We are moving further again in the direction of Europe, without something substantial being done about the democratic deficit, the shortage of jobs, the social deficit.'[873] On 21 December, approval in the Upper House followed without a voting by call. The vote confirmed the ambivalent, two faced attitude of the political mainstream, already observed in the process of approval of Schengen II. On the one hand, concerns on democracy had become widespread in parliament. On the other hand, those concerned – many of whom belonging to the parties traditionally supporting progressive integration – were wary of applying the emergency brake. Eventually, the political tradition of openness towards European integration prevailed again over the many doubts and questions. But with this decision, the fundamental questions were not answered and the doubts not dissolved. The more omnipotent the integration process grew, the more the limitation of this fundamental openness revealed itself. A development that came with ever more contention regarding the traditional majority mindset on European integration. A contention that ultimately, so it would turn out, could no longer be controlled.

Chapter 6
Stemming the Tide 1997—2005

'We said 'what's in a name? A rose is a rose is a rose' [...] It looks like a treaty, the articles smell of a treaty. So what if somebody wants to stick 'constitution' on it. We did not realise that that would have such far-reaching consequences. At the time nobody did.'

Bernard Bot[874]

6.1 Introduction

When the Treaty of Amsterdam eventually entered into force in May 1999, ideas for a new treaty, to be negotiated in a new IGC, were again already forthcoming. With the expansion of the European Union, with again ten new, Eastern-European members scheduled for 2004, the fifteen EU Member States thought it wise to deal with the institutional issues not solved in Amsterdam.[875] In February 2000 a new round of negotiations started, resulting in a new draft treaty in December of that same year. On 26 February 2001, the Treaty of Nice was signed by the Fifteen.

Usually presented as a technical improvement of the Amsterdam Treaty, dealing with the 'left overs', aimed at the rearrangement of competences and procedures within the already existing framework of the Union and not requiring new transfers of national sovereign competences to the European level,[876] the fundamental importance of the Treaty of Nice is easily overlooked. In fact, however, the signing of the Treaty opened the gates towards a new phase in the process of European integration – the search for finalising the process by formally constitutionalising it. In this regard, the Treaty of Nice was a first step towards what was to be the greatest constitutional moment

in the history of the European Union: the ratification of the Treaty Establishing a Constitution for Europe in 2005.

Although the concept of a European 'constitution' or 'constitutional treaty' was not mentioned in the Treaty of Nice, the document unmistakably displayed constitutional elements and offered chances for embarking upon the constitutional road in the aftermath of its signing.[877] A first indication was the Charter of Fundamental Rights that was proclaimed in Nice, albeit not as an official, legally binding part of the Treaty. Its proclamation was the result of a decision of the European Council of Cologne in June 1999, to set in motion the process of drafting the EU Charter of Fundamental Rights. In its turn, this decision ensued from strong insistence of the German government to work towards a constitution for Europe, of which a human rights catalogue was – as many constitutions show – an essential part.[878]

Interestingly, the more the process of European integration led into the direction of an autonomous European polity after the signing of the SEA, the more careful the European leaders had become in linking it explicitly to developing a constitution. Nevertheless, after years of silence on a constitutional future, the post-Amsterdam era brought the call for a European constitution to the table again. This new 'constitutional urgency' can be traced back to a speech of the German Foreign Minister, Joschka Fischer, delivered to the European Parliament on 12 January 1999, in which he called for a debate on the creation of a constitution for the European Union.[879] Fischer's call initially seemed to produce effect solely within Germany with contributions to the same effect of President Johannes Rau, opposition leader Wolfgang Schäuble, Minister of Justice Herta Däubler-Gmelin and various German academics. After his famous *Humboldt Rede* (15 May 2000), in which Fischer reconfirmed his ideal of federal political integration, based on a *'Verfassungsvertrag'* or a constitutional treaty, the idea gained ground.[880]

In early June, the Italian President Carlo Azeglio Ciampi, together with his German counterpart Johannes Rau, promised to 'support efforts to design a constitutional framework for Europe'. Later that month, the French President Jacques Chirac, also expressed his support for the objective of a European constitution.[881] In Nice, this agreement among the European leaders was reflected not only in the Charter of Fundamental Rights, but also in a 'Declaration on the future of the European Union' that was annexed to the Treaty.[882] In the words of professor of European Union Law, Bruno de Witte, this declaration was 'another of these "*rendez-vous* clauses" which the Member States of the European Union agreed upon when adopting a reform of the European

Treaties: each time, the compromise is not entirely satisfactory to all, so the commitment is made to look again at some unresolved issues on a future occasion.'[883] Witte here draws attention to the phenomenon, shown to be present more than once in this study, of the self-propelling dynamics of European integration, as an integral part of the process in order to guard its continuation.

In the Declaration, the EU Member States observed that, now that the Treaty of Nice had 'opened the way to enlargement' of the Union, the time had come to have 'a deeper and wider debate about the future of the Union' in which the European institutions should be involved, just like the representatives of national parliaments, those reflecting public opinion in political, economic and university circles, representatives of civil society, etcetera.[884] The European Council in Laeken/Brussels, scheduled for December 2001, was to be the occasion for the adoption of a formal declaration that would contain initiatives for the continuation of the integration process.[885]

The effectiveness of the '*rendez-vous* clause' proved itself when on 15 December 2001 the Fifteen presented the Laeken Declaration that called for a Convention on the Future of Europe. This Convention was to pave the way for a new Intergovernmental Conference (IGC) in 2004 – another illustration of how the process propelled itself – and had to 'consider the potential key issues arising from the future development of the Union and try to identify the various possible responses.'[886] Concretely, the Convention was instructed to go into the matter of the division of competences within the European Union, simplification of the instruments of the Union and the question on how to increase the democratic legitimacy, transparency and efficiency of the existing institutions. The main feature of the Declaration was that it expressed the need to address the question whether the simplification and reorganisation of the instruments of the Union 'might not lead in the long run to the adoption of a constitutional text.'[887] The Convention needed to go into sub-questions on what the basic features of 'such a constitution might be' and on how to define the values which the Union cherished, the fundamental rights and obligations of its citizens, and the relationship between Member States in the Union?[888]

Admittedly, the Laeken Declaration did not explicitly authorise the Convention to draft a European Constitution. The final objective was left vague. It was most precisely instructed to produce 'a final document' consisting of 'different opinions, indicating the degree of support which they received or recommendations if consensus is achieved.'[889] National debates on the future of the European Union, together with this final document would then be taken as the starting

point for a new IGC 'which will take the ultimate decisions.'[890] But undeniably, with the Laeken Declaration, the 'constitutional atmosphere' that Fischer, Rau, Ciampi, Chirac and compatriots had been building since the late 1990s was turned into hard political action: a Convention was about to be summoned that would be assigned to go deeply into the formal constitutionalisation of the European Union.

For the Dutch political and governmental elite in favour of progressive European integration this implied that the idea of the 1950s – a European federation, based on a European constitution – for the first time in history seemed to come within reach. But in contrast with this old dream becoming ever more true, dissenting opinions in the Netherlands swelled, calling in question whether the ultimate step of formally constitutionalising the EU was really wise or desirable. The Dutch political mainstream, however, still did not plan to allow growing doubts and negative advice to be in the way of progress on the European stage.

6.2 Postponing Hard Questions: adopting the Treaty of Nice (2001)

As pointed out above, the Treaty of Nice was primarily presented as to settle the remainders of Amsterdam, implying that a range of institutional points of contention were to be resolved by it. Effectively, the Treaty brought a series of institutional 'improvements' such as a new distribution of seats in the European Parliament, changes in the definition and application of the principle of QMV, the composition and appointment of the Commission, and the division of competences between the European Court of Justice and the Court of First Instance.[891] Moreover, it laid down a procedure of enhanced cooperation setting the rules for Member States who wanted to go beyond the minimum level of cooperation in certain policy fields foreseen by the Treaty and it provided the Common Foreign and Security Policy (CFSP) with a strong basis within the treaty framework of the European Union.

In fact, more interesting than these rather technical arrangements, were the 'pre-constitutional' elements, already mentioned above, that came with the treaty and its signing, namely the declaration that called for a 'deeper and wider debate' on the future of the Union and the proclamation of the Charter of Fundamental Rights. These elements were the leg up to concrete political steps towards a constitutional future for Europe. They reveal how the Treaty of Nice was not to be seen as a document in isolation, but as a crucial new step in a dynamic process towards developing a new European political entity

that fundamentally changed the face and character of the national political identity of the Member States. In the Netherlands, however, in line with the old habit of sailing with the European wind without lingering on conceptual issues, the Treaty of Nice was not dealt with as a landmark setting the course for the future of both the Dutch and the European polity. On the contrary, it was seen as yet another necessary step towards something bigger, not to be dwelled on. But to what exactly? The debate shows a fundamental ignorance of what should become of Europe, whereas Europe seemed to nearly know already.

Position of the government

In its presentation of the Treaty of Nice to parliament in June 2001, the second 'purple' cabinet (PvdA, VVD and D66) led by the social-democrat Wim Kok, characterised the document as a 'meaningful step forward.'[892] From the explanatory memorandum it becomes clear that as far as the Dutch government was concerned, the meaning of the Treaty was to be principally found in the technicality of its arrangements. The Treaty of Nice was first and foremost lauded because of the institutional problems it addressed, preparing the Union for the great eastward expansion, which was scheduled for 2004.[893] Moreover, with the extension of QMV and co-decision of the European Parliament in more policy fields, the delicate matter of democratic working of the Union had been somewhat improved; another reason for the Dutch government to judge the Treaty to be worthy of approval although – again, similar to the SEA and the Treaties of Maastricht and Amsterdam – the Netherlands had secured less than it had initially aimed for.[894]

Typically, in the more than fifty pages in which the government accounted for the result obtained in Nice, only very few words were devoted to the 'pre-constitutional' elements of the Charter of Fundamental Rights and the Declaration on the Future of the Union. With regard to the first, the government limited itself to the remark that this Charter and its precise status within the EU legal framework would be discussed in a future IGC.[895] On the issue of the Declaration, the government rather purposelessly remarked that 'It is of importance that […] it has been laid down that the debate on the future of the Union will be continued.'[896] On its own preferences regarding the future of the Union, the government kept silent.

Placing the Treaty of Nice in the historical line of consecutive European treaties presented by the Dutch government to parliament since the early 1950s, it stands out that the line of defence, chosen by the government, was by no means new. Repeatedly, the successive Dutch

governments had focused on practical results of the negotiations, leaving little attention to the great politically-symbolic value of new treaties, preambles, or references to the future or final objective. More plausible than being merely the result of well thought-out political tactics in which parliament was deliberately distracted from substantial matters by a focus on technicalities, this might well have been the result of a continuing blind spot, resulting from historically developed characteristics in the Dutch political culture. A pragmatic focus on concrete and substantive results at the European negotiation table, considered to benefit the national interests, had structurally been regarded more important than any debate on final objectives or a constitutional future of the European project.

Not surprisingly, considering its business-as-usual-discussion in the explanatory memorandum, like its predecessors, the Kok administration called on parliament to approve the Treaty of Nice, in accordance with the regular procedure as laid down in article 91, subsection one of the Dutch constitution. A proposal that the Council of State did not protest against.[897] Interestingly, the Council *did* have extensive comments, but they pertained to the governmental presentation of the treaty in general. The lacuna, signalled above, of not spending a word on the European constitutional path that was announced in Nice, was noted by the Council and it did not omit to point to the political danger for the Dutch government of not expressing its views on this matter. 'Meanwhile this […] "finality debate" has started in several bodies', the Council started. 'The Council of State', it went on, 'is of the opinion that the Treaty which is presented here should be considered especially in relation to this debate.'[898] The Council condemned the absence of any fundamental political debate regarding this finality: 'That is why the Netherlands is in danger of being dragged down into a development it does not want in fact, without a clear alternative.'[899]

Here, the Council of State displayed a sharp eye for what had structurally been lacking in political circles in the Netherlands ever since the start of the integration process: a fundamental and conceptually solid debate on the eventual destination of the process of European integration and what the Dutch wishes were in this respect. Indeed, successive Dutch governments had declared themselves to be in favour of a European federation and/or a European Constitution,[900] but had never taken the trouble of defining the desired power relations within this federation-to-be, or of thinking about its desired constitutional characteristics. Until 2001, Dutch governments had come off well with turning a blind eye to what was structurally

disposed of as a matter for the future, not relevant in the here and now. But with the constitutional road officially opened in Nice, the continuing silence of the government was to an increasing extent considered out of place; not only by the Council of State, but also among Dutch public intellectuals.

Filling the intellectual gap that developed from the lack of political debate in the early years of the new millennium, Dutch thinkers drew attention to the conceptual quandary that the process of European integration found itself in. Jan Rood, then head of the Clingendael European Studies Programme, for instance, observed that European integration was not, and had never been, like the classic processes of the creation of states in which power was one of the most important motives. The opposite was true. Its original starting point had been pacification, aimed at the removal of the power-political attributes of the state. 'What is the meaning of the preceding, seen from the classic dichotomy supranational-intergovernmental?,' Rood wondered. 'In fact,' he concluded, 'that these concepts fail in judging the state of the integration process'.[901]

Whereas the term 'supranationalisation' had long served a political purpose, Rood's and suchlike observations contributed to the development of a growing need for new concepts or paradigms to cover the reality of the integration process.[902] When the (political) discussion on a constitution for Europe got going in the early years of the new millennium this became urgent. Europe was not a state. Why should it have a constitution then? The jurist Van der Tang wondered if concepts such as a constitution or constitutionalism were applicable to the EU, as they had been used only in connection with classic nation states.[903] Building on the international academic discussions as they had developed since Dieter Grimm's key publication on this matter in 1995, on the need for defining a European 'people' – a *demos* – before Europe should be constitutionalised, the former judge of the European Court of Justice Jos Kapteyn thought a solution for the conceptual confusion on the identity of Europe necessary before thinking of writing a constitution.[904]

The growing disinclination towards constitutionalising the EU, and herewith defining the Union in terms of a 'state' (i.e. a European polity, people, etc.) gave thus rise to a remarkable situation. Whereas Europe moved towards defining itself in statelike terms, the Dutch intellectual elite moved in the opposite direction of rejecting the association of any of these terms with the integration process. The ultimate attempt on the European level, in other words, to shift the perspective of a European Union built on constitutional nation states,

to a Union that encompassed these states – with a constitution of its own – was questioned, or even rejected by a growing number of public intellectuals.

Around the same time, in political circles in the Netherlands, a remarkable shift was taking place that went counter to the old tendency of the Dutch political mainstream to assume a pro-active, cooperative and not all too critical attitude in matters of European integration. Around the turn of the millennium, in addition to the traditional ultra left and Protestant-conservative critics, a new and strong current of political antagonists of progressive European integration – seemingly almost out of the blue – emerged. This coincided with the tempestuous entering into the Dutch political arena in 2001 of the hedonist, somewhat dandyish and ever more popular professor Pim Fortuyn as the party leader of *Leefbaar Nederland (LN, Livable Netherlands)* which had been established in 1999. Programmatic spearheads of LN were direct democracy (i.e. the introduction of referenda) and reviewing the mainstream 'tolerant' Dutch views on politically problematic questions such as, among other things, asylum policies.[905] Fortuyn, already known in the Netherlands for his unvarnished criticism on what eighth years of purple regency had yielded the country, seemed the ideal party leader.[906]

Fortuyn was also critical of the Dutch approach to the process of European integration. He criticised the 'captiousness' of Brussels, the transference of sovereignty and competences to 'pale institutions such as the European Parliament and the European Commission' and of financial contributions to the EU that were far too high compared to what the Netherlands received – an issue soon also to be taken on by the financial leading man of the VVD, Gerrit Zalm. It made him publicly wonder whether the Netherlands was 'Simple Simon' in the European classroom.[907] With this strong rhetoric, Fortuyn heavily shook up the political relations in the Netherlands and in the election campaign running up to the national elections of 2002, he would be a great challenge for the parties of the political mainstream, which were not used to such Europe-critical sounds to fall on fertile grounds outside the political boundaries of the Protestant-conservatives and hard-line socialists.

At the time of the parliamentary debate on the approval of the Treaty of Nice in the autumn of 2001, however, Fortuyn had just entered the political stage and no one could foresee the great role that he was about to obtain. In the debate on Nice, neither Fortuyn, nor his political ideas, making sense or not, nor the wider public opinion they represented, played a part. With their comfortable, but in fact ever more

worn-out rhetorical coats, the usual advocates pleaded in favour of approval of the Treaty of Nice. But below the surface, and it did not go unnoticed, something was smouldering. The question that remained was how and when the discord would come out.

Debate in parliament

Following the pattern of the parliamentary debates on the SEA, Maastricht and Amsterdam, the parties in favour of progressive European integration in general, and the approval of the new treaty in particular, started with a lament on the things that had not been reached in Nice. Welcoming the increase of decision making by QMV, the addition of competences of the European Parliament, the agreement on the reduction of the number of European Commissioners once the ten candidate members had joined the EU, and some other institutional rearrangements that the parties had argued in favour of, at the end of the day the PvdA, D66, CDA and VVD judged the final result as meagre. From the perspective of filling the much denounced democratic deficit, of increasing transparency and even the quality of preparation for the new round of accessions – this last element had been the main reason for negotiating a new treaty – these parties questioned the value of the Treaty or even judged it as a step back.[908]

Fully in character, the four parties favouring progressive European integration, especially in the Lower House, aimed their critical arrows at specific and technical arrangements in the text of the treaty that they had hoped to see worked out differently. None of these parties addressed the issue, specifically highlighted by the Council of State, that it was high time for the Netherlands to make up its mind with regard to the final objective for the process. As far as the Europe-minded parliamentarians looked forward to the European Council in Laeken, the Convention on the future of Europe, or the IGC scheduled for 2004, which had all been announced in Nice, they presented it as new chances for fixing old shortcomings.[909] On the conceptual leap towards a constitution for Europe and fundamental questions regarding the implications of this leap for the Dutch polity as a whole and whether it was willing to accept these, the four parties remained silent.

In line with earlier debates, the parliamentary parties more critical of the integration process, did ask attention for the fundamental questions that came with the decision to go along in a process of constitutionalisation. Striking in this context is the remark of the senator Kars Veling of the Christian Union (CU) – a new party resulting from the merger of the GPV and RPF in 2000 – that in the Netherlands, and also abroad, a debate was missing 'as it was for instance actually

held when the federation of North American states was built in the 18th century. The division of power and the democratic control in Europe always come up for discussion in stages and never as a whole.'[910] Here, Veling touched upon one of the main characteristics of the European integration process so far. The fear of prematurely calling the process to an end, before the ideal had been reached, stopped the Member States from starting a debate on the existential questions regarding the eventual power relations in a European federation and to where the power of a European federation should reach. For the Netherlands, Veling's observation was particularly true. Since the start of the integration process, a consistent stable political majority that considered European integration as a vital necessity for the Netherlands, had responded guardedly whenever such questions tended to come up.

Now that internationally prominent political figures had made the finality of the European integration a topic of discussion, however, it became harder to ignore the questions that had been begged for years. The concept of finality, in other words, became significant and hard to ignore in the parliamentary debate on the Treaty of Nice, whether the political mainstream liked it or not. The CU, for instance, insisted on the concrete interpretation and operationalisation of the subsidiarity principle, which since the early '90s, had been used more and more as a makeshift measure to conceal obscurities on the division of powers between the level of the Union and that of the Member States.[911] Illustrative is also the remark of GroenLinks, a party that had critically scrutinised the democratic calibre of the integration process ever since its formation in 1990, that it would judge the treaty in the light of the 'post-Nice-agenda' and the organisation of the announced constitutional route.[912] Now that it appeared that a constitution for Europe would be written, this party argued, it was high time to stop the 'legislating behind closed doors' and to directly involve the citizens of Europe.

This idea was by no means new. Ever since the parliamentary debate on the Maastricht Treaty, GroenLinks had devoted itself to breaking the political tradition of approving basic European Treaties with the smallest minority possible, i.e. the regular approval procedure via Article 90, subsection one of the Dutch Constitution, by replacing it by, or adding to it, a vote by referendum. Already with regard to the treaty of Maastricht, the party had proposed a vote by means of a popular referendum in order to directly involve the Dutch citizens in the process and thus contribute to covering the democratic deficit of the integration process observed to be present to an ever greater extent.

At the time, a proposal to this end had been turned down. GroenLinks saw new chances for reaching its political ideal of a popular vote on European integration in the aftermath of Nice by making use of an association of the process of constitutionalisation with the notion of sovereignty of the people and the general rise of political attention in the Netherlands for forms of direct democracy. In the procedure of approving the result obtained in Nice, the party again brought up the question: 'is the government of the opinion that […] a future European constitution is suitable for a referendum, beside the national ratification procedures?

Not surprisingly, the new step towards progressive integration, federalisation and constitutionalisation was rejected by the SP. Despite its rather politically isolated position within a parliament still largely made up of Europe enthusiasts, the party showed to notice, and feel supported by, the growth of public doubts and resistance *vis-à-vis* the process of European integration. Referring to public polls executed by well-established research centres, it observed that 'the distrust of the European Union and institutions of the Union has not decreased of late.' On the basis of this observation it claimed that with their tendency of choosing the forward flight, political Europhiles in the Netherlands clearly went against the will of the Dutch people. [913] Considering the course of history in the years to follow, the warning of SP leader Jan Marijnissen that followed, deserves special mention: 'The estrangement […] cannot keep increasing with impunity. If the euro project fails, because our country will do badly out of it, the Europhiles must be on their guard against the anger of the people.'[914]

From defence towards consensus

In relation to the Treaty of Nice, however, anger of the people that might arise could be left out of consideration, since the ratification of this agreement could be dealt with within the walls of parliament if a regular majority was willing to support it. And such a majority was to be found quite easily.

Notwithstanding their initial complaints, the parties of the political mainstream that had hoped for Nice to bring more in the fields of democratic relations, transparency in decision making and institutional improvement, eventually declared themselves in favour of approval. Soothing words or any form of persuasion of the government were not even necessary. 'If it cannot be done the way it should be done, then there is nothing for it but to do it the way it can be done', proclaimed the first in line.[915] D66 followed: 'Nice is a minimal thing, but let's put up with it.'[916] The CDA joined in by stating that: 'In the

end we vote for this quarter-full glass and by doing so in favour of this treaty.'[917] And the VVD closed the ranks on a similar glum note: 'Nice results, it is true, do not deliver amply sufficient grades, but anybody who has been to school knows that in practice one can also get through with a meagre six.'[918]

Crucial in the considerations of these parties when voting in favour of the treaty, was the conviction that ten candidate members had been given the prospect of accession in the near future and that – despite its many shortcomings – the Treaty of Nice offered the essentials for this accession to be carried out as planned. If the Treaty was rejected, to put it differently, a new agreement had to be reached, which would make it impossible for the EU expansion to take place in 2004. In line with their views regarding the earlier rounds of accessions, the PvdA, D66, CDA and VVD agreed that any delays or cancellation of the accessions should be prevented.

Falling back on the well tested promise-is-debt line of argument, the step to pleading in favour of Nice in order to fulfil the obligation that the Netherlands accepted, was easily made. From a rhetorical perspective, the PvdA expressed this stance most daringly. Frans Timmermans, the spokesman on behalf of the party in the Lower House, claimed that:

> 'This move cannot be stopped. From time to time this means jumping into a swimming pool without the certainty that it is completely full of water. But that is under force of circumstances. The expansion must take place within a year. That is a historic task!'[919]

The strongest remonstration against this clearly passionate, but theoretically rather thin argument was expressed by the antagonist of the treaty, Jan Marijnissen (SP):

> 'This contention concerning dynamics does not appeal to me. Those dynamics are the result of an engine and that engine is Mr. Timmermans, the cabinet and other Europhiles in Europe.[920]

It was a strong refutation of the self-evidence of ever progressive European integration: Europe did not move along by itself, it moved along because the political will was summoned by its political advocates. The obligation to approve B, because A had been agreed on earlier, just like historic assignments did not exist autonomously; as we have seen the basis for this was a rhetorical construction. Of course, in

line with previous debates in the Dutch parliament, the advocates of approval of the treaty could not be tempted to abandon their reasoning in arguments of succession. It was a powerful and convincing way of thinking for those who believed that the cyclist should keep riding in order not to fall; a spectre for those who wanted to move on.

Strikingly, even some of the staunch Protestant-conservative critics of European integration who strongly objected to transferring state sovereignty, went along with the reasoning in favour of treaty approval. Considering the fact that they perceived the 2004 expansion to depend on the approval of the Treaty of Nice and that its approval would not require new transfers of sovereignty, these parties considered it best to vote in favour.[921] Even the CU spoke of the accession of the candidate members as 'historically inevitable', perhaps not realising that in the long run such words, and acting upon them, would create a new 'historical inevitability', to wit a European Constitution.[922]

Joining in with the others, GroenLinks was eventually also willing to vote in favour. In reaction to the question of this party to the government regarding direct involvement of the Dutch people, it had finally received a positive response: 'the government thinks that a future European constitution can under conditions be suitable for a referendum.'[923] This time, so it would turn out, GroenLinks had sown the seed for creating its own political dynamics which in 2005 would – 'inevitably', a skilful rhetorician could claim – lead to a vote by popular referendum on the Treaty Establishing a Constitution for Europe; a unique event within the context of contemporary Dutch political history, since the last and only national referendum that had taken place in the Netherlands dated from 1797.[924] But that was all still in the future. With regard to the Treaty of Nice, GroenLinks lined up with the party views as discussed above: 'We are very convinced advocates of that expansion and think that, with regard to those countries, we cannot allow ourselves not to support this treaty now.'[925] Thus, disciplining itself in voting in favour of the treaty, the Kok-administration did not need to worry about approval. And indeed, on 22 November 2001 the Dutch Lower House, approved the Treaty of Nice with a strong majority. Only the SP rejected it. On 18 December, approval in the Upper House followed without a formal vote. Again the minutes of the meeting register the rejection of the SP party members present. Apart from the technical matters that Nice would settle, the vote made one thing crystal clear: the Netherlands would embark on the path of drafting a constitution for Europe.

6.3 Sailing a New Voyage by an Old Compass: the European Convention (2003)

On 15 December 2001, three days before the Dutch Upper House approved the Treaty of Nice, the European Council had gathered in Laeken. As described in the introduction of this chapter, the Declaration that resulted from this meeting formed the basis for the installation of a Convention, charged with the task of drafting a constitutional text for Europe. In this Convention not only high ranking government officials of the Member States would take part; an important difference with the old habit of designing new European steps in an IGC. Also representatives of the European Commission, the EP, and the national parliaments were actively involved in the process.[926] Even representatives of the parliaments of the candidate members were invited to join.[927] To this already extensive company, delegates of various committees,[928] the social partners and the Ombudsman were added, bringing about the total number of participants of the Convention to over 200.

In Laeken the Member States agreed to appoint the former president of France, Valéry Giscard d'Estaing, – the man who in the 1970s had had a central role in institutionalising the European Council and the first attempts of monetary integration – as the Chairman of the Convention. The choice for this man in this position was not without relevance. Product of his own constitutional culture and statesmanlike ambitions and inspired by the American Philadelphia Convention of 1787, Giscard d'Estaing did little to conceal that he had great ambitions with the Convention. Those close to him knew that he was serious about it; during the Convention he had the Constitution of the USA in his pocket.[929] His team and many working in or for the European institutions, felt from the very start that the Convention would work towards a historic moment.[930]

In his opening speech to the Convention on 28 February 2002, Giscard d'Estaing did not mince words. Befitting the French 'tabula rasa' mentality when it came to writing a constitution, Giscard D'Estaing proposed to bring a 'fresh start' to the multinational adventure of the process of European integration.[931] The Chairman explicitly aimed at creating a single Treaty that replaced the Treaty on European Union and its amendments of Amsterdam and Nice. In order to reach this goal a broad consensus was needed in the Convention to result in one single proposal. If the Convention attained this goal, Giscard claimed, the path to a Constitution for Europe would lie open. He decided not to lose any time on what the status of this new Treaty should be. 'In order to avoid

any disagreement over semantics,' Giscard stated resolutely, 'let us agree now to call it: a "constitutional treaty for Europe".'[932]

And there it was. Without any fundamental debate on the conceptual details of such a document, bringing about a constitutional treaty formally became the central objective of the Convention. The rhetorical lobby in favour of formally constitutionalising the European Union, started by Joschka Fischer in 1999, now got its way in a statement before 200 Convention members telling them to do so. The aim of creating a constitutional treaty for Europe, in other words, became the new political reality. In its wake the challenge followed to find the right words acceptable to all, to explicate the concept that – via (preambles of) European treaties, the development of a common legal framework, European jurisprudence, the proclamation of an internal market, the introduction of a common currency, etc. – had been implicitly systematically built on in the process of European integration: the existence of one European polity, encompassing the various national polities of the Member States.

For this task, the Convention had one and a half year, of which the first months would be spent on plenarily gathering ideas – the listening phase – regarding the umbrella themes: the division of competences within the Union, the operationalisation of the subsidiarity principle, the role of the national parliaments, and the development of a Constitution. Subsequently, a second (the deliberating phase), and a third (the proposal phase), were to follow. Throughout the duration of the Convention, plenary meetings were to be held on a regular basis, with intervals of a few weeks. Giscard D'Estaing, however, managed to watch over the direction in every single phase. After the plenary meetings, the Presidium – supported by its secretariat – retired to its office where it prepared proposals for future meetings. These proposals could be discussed and amended in the meetings of the Convention, but – as a true founding father – Giscard D'Estaing kept the initiative.[933]

Initial indifference in the Netherlands

The historical importance of what was about to happen under the direction of Giscard D'Estaing, sharply contrasted with how the Convention was initially approached by the governmental elite in the Netherlands. The facts and stories on the Dutch position *vis-à-vis* this process, indicate a lack of the sense of the grandeur of what was about to happen. It is a public secret that the prime-minister of the two latest Dutch cabinets, Wim Kok, was initially seen as a possible candidate for becoming the Chairman of the Convention. Although the exact reasons are hard to retrieve, for they are wrapped in diplomatic mystery,

it seems that an underestimation of what the Convention would yield was decisive in the Dutch hesitations about accepting the position and the eventual loss of the chance to get it.[934] Reacting to the possible appointment of Giscard D'Estaing, Kok displayed a mix of relief, laconism and haughtiness: 'I am glad it is not me.'[935] The MP for the VVD, Frans Weisglas, heartened him by stating in parliament: 'The good thing is that the Prime Minister has not become the chairman of this talk circus. That post is far beneath the quality of the Prime Minister.'[936]

The perception of the Convention as becoming nothing more than an inefficient discussion group, was persistent among members of the Dutch political and governmental elite. Also the Minister of Foreign Affairs Jozias van Aartsen (VVD) condescendingly commented on the Convention as being an 'noncommittal debating club'; the real deal, so he claimed, would take place in the Intergovernmental Conference (IGC) planned in its aftermath.[937] Even the original representative on behalf of the Dutch government to the European Convention, the D66 star politician and 'European' Hans van Mierlo – in a later stage, he was replaced by the (former) (Euro)parliamentarian of the VVD, Gijs de Vries – qualified the process on the eve of the opening of the Convention as 'political brainstorming.'[938] This attitude might also explain why the Netherlands allowed other opportunities to secure one of the other key-positions in the Presidium to pass.[939]

How to read the initial indifference – 'disdain' may be the better word – of the Dutch governmental elite for the Convention? Most certainly, the internal political worries of the Netherlands contributed to that. When the Convention started out in February 2002, the Kok II administration was awaiting the results of an extensive investigation into the responsibility of the then government, also led by Wim Kok, concerning the Srebrenica massacre that had taken place in July 1995 in front of 'Dutchbat'.[940] After the results had been made public, the Kok II administration felt compelled to resign. On 16 April 2002, the cabinet fell. New elections were necessary. Meanwhile an internal party conflict had put an end to the tender political alliance between *Leefbaar Nederland* and Fortuyn. This, however, did not mean the end of the political ambitions of the latter. Fortuyn established the *Lijst Pim Fortuyn* (LPF) with which he intended to participate in the national elections of 2002 and which became immensely popular in a very short period of time. But on 6 May 2002 – nine days before the elections would take place – Fortuyn was assassinated by a radical activist, leaving his and the other parties in total shock. Maybe the latter were even more shocked when on 15 May 2002, the LPF gained 26 of the 150 seats in parliament at its first elections. Now the parties of the

old political mainstream had to rise to the challenge of incorporating into the government this party that attacked many of their sacred cows, their deep consensus on the function and desirability of European integration being one them. Eventually, the CDA succeeded in forming a centre-right cabinet with the LPF and VVD. This coalition, however was plagued by internal struggles that led to the fall of the cabinet in April 2003. Again, elections needed to be organised.

All this occurred in the first year of the Convention. The phase of national political transition that the country went through and the political unrest and introversion that came with it, naturally distracted from the debates on the future of Europe as they occurred in the Convention. However, also another factor, resulting from how the political mainstream had been used to approach Europe, must be taken into account when searching for an explanation for the indifference of the governmental elite to the Convention. It had its origin in what had already been expressed by Van Aartsen himself and which was confirmed by the experiences of the Dutch diplomat in the team of Giscard D'Estaing: 'The Netherlands were of the opinion that it would be far more powerful in a classic ICG.'[941]

This conviction – resulting from a historically developed political culture in which the government had always had a free hand in matters of foreign affairs and European integration was structurally considered to be one of these matters – showed itself in the way the Dutch government approached and prepared itself for the Convention. From its outset it made clear that the traditional spearheads of the European policy of the Netherlands would also be its guiding principles in the Convention. The strengthening of democracy within the Union, the strengthening of the European Commission, the European Parliament and the policy instruments of the Union – the CFSP for instance – were considered important by the Dutch government.[942] The underlying thought still was that the economic and political interests of a small country – a central element in the perception of the country of the political elite – were best guaranteed within a European Union characterised by strong Community institutions. The government made this view clear when it stated that it was supportive of a European constitutional Treaty 'on condition that it contains every guarantee for preservation of the essential characteristics of the communal structure.'[943]

Illustrative in this regard, is, for instance, the fierce resistance against the French-German idea that came up within the convention to appoint a Chairman of the European Council for a period of five years.[944] The institutionalisation of this European 'Sun King' – a telling

metaphor hinting at the old Dutch fear of French dominance – was feared to benefit the larger countries more than the small countries.[945] It was thought to contribute to the institutionalisation of the European Council and, by effect, would undermine the position of the Commission and the EP. Within the Dutch foreign policy mindset, it was believed that the Netherlands would eventually be better off in a powerful supranational Union to which it had yielded its sovereignty voluntarily through a process of diplomacy and deliberation, than within European cooperation in which a structure of intergovernmental decision making would keep the power with the big continental powers. The paradox that announces itself is that, notwithstanding its distrust of an intergovernmental ruling of the Union in the long run, the Netherlands was so keen on waiting with cutting important knots until the Intergovernmental (sic!) Conference of 2004. It seems one of those inconsistencies in the Dutch approach towards European integration that is difficult to explain in another way than that – it has been observed before – the political mainstream tended to look away from the conceptual difficulties of its own approach towards European integration, by sticking to the tenability of its traditional foreign policy approach in a process which became more and more a matter of interior relevance.

The business as usual approach to the Convention and the dogmatic focus on traditional foreign policy spearheads and strategy is also underlined by how the Dutch contributions to the Convention were prepared. A former staff member in the service of the Dutch delegation recalls that within the ministerial circles in the Netherlands, behind the scenes of the Convention, traditional diplomacy reigned supremely. In order for the Netherlands to obtain support for the Dutch stances and contributions to the Convention, high level diplomats from the various European capitals were invited at the Ministry of Foreign Affairs in order to fine-tune ideas and proposals of the Netherlands and possible partners.[946] Thus, the Netherlands found a way to continue by back channel diplomacy a more traditional IGC method, within the Convention.

Ironically, because of its persistent focus on the traditional priorities of the Netherlands – most importantly, the division of power within the Union – the Dutch delegation, and the Dutch governmental elite in general, were blind to the immense conceptual leap that was prepared by Giscard D'Estaing. The formal introduction of the term 'constitution' or 'constitutional treaty' in relation to the process of European integration, was an unprecedented historical step. If a constitutional text was to result from the Convention – even apart

from the exact provisions it introduced – and it would subsequently be adopted by the European Member States, a European constitutional order, structurally worked on in the past six decennia but until then never officially acknowledged in the Member States, would finally be formalised. It implied that the various peoples of Europe, until then citizens under their respective national constitutions, would henceforth be European citizens, bound by a European Constitution as well. From the perspective of the identity of the polity not an insignificant change indeed! The concept of state sovereignty, moreover, would also *de jure* lose essential elements of its meaning from the moment that an umbrella constitution would be adopted by the EU Member States.[947]

In the Netherlands, however, the element of the politically conceptual changes that would follow from the formal constitutionalisation of the European Union, was not deemed a matter of concern or even of interest. Interviews with those involved in the process of the Convention on behalf of the Netherlands, confirm the picture that already appeared from discussions in parliament: that the introduction of the term 'constitution' or 'constitutional treaty' by Giscard D'Estaing was a non-issue in the Netherlands. Wim van Eekelen, member of the Dutch delegation for the Upper House, recollects that little was said, neither in the delegation, nor in political circles in the Netherlands, regarding the introduction of this term.[948] Former Minister of Foreign Affairs (2003-2007) and Permanent Representative with the EU on behalf of the Netherlands at the start of the Convention, Bernard Bot, also explained that in the Netherlands the constitutional label was regarded as primarily a matter of symbolism, attached great value to by the French, but not essentially altering the fact that eventually just another treaty would be signed by the EU Member States.[949] Diplomatically, it was also deemed sensible not to enter into discussions on the use of this term, because it might be at the expense of precious time and attention to discuss the institutional wishes of the Netherlands. Also in the department of Constitutional Affairs, part of the Dutch Ministry of the Interior and Kingdom Relations, this view was dominant: 'With us it was never under discussion that it was a treaty and not a Constitution in the literal sense of the word. What was discussed was their pretension to make it look like a Constitution and that we then had to be of help in order to bring that about.'[950] In this observation the rhetoric dissociation stands out between a constitution in the literal sense of the word and other texts that carry the title Constitution but are in fact not. This dissociation would come to play an important role in the process of getting the treaty approved.

The indifferent attitude towards the constitutional label can be understood from the pragmatic attitude with which the political elite had treated the Dutch constitution, in particular when foreign affairs were at stake. Emotionally, there had never been deep feelings for the constitution, which may be explained from the fact that existentially the country had always been very much dependent on the larger world. The first chapter of this study has shown, that, in 1953, the Netherlands even decided of its own free will to remove essential elements of its constitutional sovereignty. By doing so it had showed its belief in dependence on the international community, and had consolidated that conviction at the same time. For the Dutch political elite, associations with the term 'constitution' – a sovereign state, a people, a polity – might have been far less valuable than for the European partners. Illustratively, in the Dutch parliamentary debate the treaty in the making in the Convention, was generally carelessly referred to as the *Grondwet* (Constitution) for Europe or the European *Grondwet*, instead of the semantically more concealing term of a constitutional Treaty. Many pro-Europeans, in fact supported the coming about of a European Constitution in the literal sense of the word and for others what the treaty was called was not the issue. As long as its provisions benefitted the interests of the Netherlands as they were perceived by a governmental and parliamentary elite: strong European institutions in order not to be left at the tender mercies of Paris and Berlin and, of course, something had to be done as well to improve the democratic legitimacy. Solidly rooted in their own mindset regarding European integration, this mainstream did and could not foresee how – eventually – popular associations linked to the term 'constitution', would come to play a crucial role in the approval procedure of the treaty.

Position of the government on the final result

The further the Convention went on and the more it became clear that Giscard D'Estaing intended to deliver a text that could not be easily brushed aside by the various governments, the Dutch government and delegation to the Convention became aware that the initial indifference of the Netherlands had been somewhat out of place.

In the listening phase already, the representative on behalf of the government, Van Mierlo, had noted that not all participants to what he called the 'political brainstorming', i.e. the Convention, wanted to wait and see until the deals of the IGC that would follow the Convention had been made: 'Some think they are brainstorming, some think they are already negotiating.'[951] After the summer of 2002, this realisation started to set in in wider circles. In its memorandum 'Europe under

construction' of 25 September 2002, the Balkenende administration reflected on what the Convention had yielded so far.[952] It signalled that under the guidance of Giscard d'Estaing the Convention had greater ambitions than initially expected and that the result might become the point of departure for negotiations in a new IGC.[953] Implicitly admitting its early underestimation of the importance of the Convention, the government – most likely also conciliatory to the LPF critics of European integration in the coalition – stated that the moment had come to direct the Dutch input in the Convention more emphatically and 'to monitor the progress of the proceedings more closely.'[954] On 5 October 2002 – not long before the deliberation phase had started – the representative of the Dutch government, Van Mierlo, was replaced by the liberal MP Gijs de Vries (VVD). Although in the official reporting Van Mierlo declared that he had given back the assignment allegedly not wanting to operate while chained by the government,[955] it has also been claimed that the resignation of Van Mierlo was welcomed or even orchestrated by the government: it offered the first Balkenende administration – which had entered the political stage in May 2002 – the chance to appoint someone for the post who was generally considered to be more of a realist and easier to manage.[956]

With Gijs de Vries as the government's representative, the Dutch delegation did its work during the rest of the Convention. Although not all Dutch wishes were complied with, it was agreed after all to install a permanent Chairmanship of the Council. [957] Concerns regarding the power of the Commission and the future of the CFSP remained, but on the other hand, from the perspective of the priorities that it had set beforehand, the delegation could also look back contentedly. One of its main priorities – more decisions in the Council to be taken by QMV – was obtained.[958] Another result, particularly welcomed by the Netherlands was the removal of the pillar structure, introduced in Maastricht: 'That was "Black Monday". Finally […] the Netherlands was put in the right.'[959] Even before the Convention had formally finished its work the second Balkenende administration (CDA, VVD and D66) that had come to power on 27 May 2003, qualified the draft constitutional Treaty as an 'gigantic step forward.'[960]

Debate in parliament

In the first phases of the Convention, parliament was not closely involved in the work and activities of the Dutch delegation. After setting the course, the government did not enter into fundamental debates on its strategy in neither the Lower nor the Upper House. It

befitted the political culture in which parliament was used to giving the government a free hand in international negotiations.

The parliamentary members to the Convention, on the contrary, found it important to update their fellow parliamentarians on the progress that was made throughout the process. Although they spoke in the Convention in their private capacity and did not act on the basis of a mandate of the national parliament, they were keen on involving their fellow parliamentarians; indeed, the Convention could only be considered a success when its result was politically supported by those who would – in the end – have to vote on it. In monthly progress reports these parliamentarians informed the States-General on what had been discussed in Brussels. But also with regard to these reports it can be observed that the supply only started to get quantitatively substantive from February 2003 onwards, when the last phase of the Convention started.[961]

Depending on the issues at stake, the parliamentary debates on the Convention were dealt with in the various parliamentary committees on European, Foreign and Legal Affairs, in plenary meetings of the Upper or the Lower House, or in combined meetings of both Houses.[962] Apart from the role of these meetings in informing parliament of the progress of the Convention, the input of parliament in the Convention was also further developed. The minutes of the meetings show an overrepresentation of senators present; a picture that is confirmed in interviews with those working in and for the Dutch delegation to the Convention.[963] Despite the efforts of the Dutch parliamentary delegation to involve the Lower House in the process, the interest of the members of this house for the Convention remained slight. A full parliamentary agenda, national political events and activities and a political culture in which it was structurally self-evident that the government took the lead in matters of foreign affairs, might well have contributed to MPs in the Lower House keeping aloof. Their seemingly unconcerned attitude was an eyesore for the parliamentary members to the delegation who were worried about the influence of the parliaments anyway: 'The government representatives begin to behave in the Convention as if it were an ICG. That is why it is getting more and more difficult for the parliamentary representatives to also leave their mark on the process.'[964]

The Dutch parliament was in a large measure united regarding its priorities in the Convention. Strengthening the European Parliament, enhancing the involvement of national parliaments in European decision making, and getting the subsidiarity principle conceptually clear, were issues widely supported.[965] Also the basic idea of clarifying

and simplifying the structure of the Union by replacing the series of old treaties by one new treaty, did not meet with any fundamental criticism in parliamentary circles in the Netherlands.

Outstanding in the parliamentary discussions on the progress of the Convention is the attention that went to the constitutional label of the document in preparation. Contrary to the governmental indifference to the introduction of this term 'constitution', the further the Convention got in drafting the constitutional treaty, the more value was ascribed to this label in the Dutch parliament. The CDA-senator Jos van Gennip spoke of a process of decision-making of 'exceptional historical relevance.'[966] 'The mere concept "Constitution of the European Union"', he proceeded, 'puts peace before war, values before markets, citizenship before arbitrariness.'[967] Senator René van der Linden (CDA) and MP Hans van Baalen (VVD) both framed it as the casting in stone of the European arrangements.[968]

Although there is no conceptual or analytical clarity in these remarks regarding the way the new treaty would exactly differ from its predecessors, they perfectly illustrate the parliamentary perception of what was at stake and how its importance was rhetorically charged. This, not surprisingly, was grist to the mill of the Dutch Eurosceptics who saw in it an extra reason – even apart from the actual content of the treaty – to reject the initiative of Giscard D'Estaing beforehand. The SP and SGP both indicated that they considered the initiative of the development of a European Constitution to be strongly interwoven with the attempt to turn the European Union into a full-dress federation.[969] In line with the viewpoint expressed in the intellectual debate by people like Van der Tang, the SGP deemed a constitution to be reserved for a national state and since the European Union was not a state, the party considered it improper to use this term for the new European Treaty. The alternative that it proposed was 'basic treaty'.[970] Showing an understanding of the working of constitutive rhetoric, the SGP also pointed out that, in the party's view, the issue of the formal title of the new treaty was more than mere semantics: 'The designation 'constitution' or 'constitutional treaty' does put a burden on the content of the treaty. The discussion about fundamental rights, which is part of a constitution, is an example of that.'[971] Harry van Bommel, MP for the strongly Eurosceptic SP, seized the opportunity to point out that the use of the constitutional label was symptomatic for something bigger: 'The federalists are in charge. The symbols are there already; the flag, the national anthem of the Union and now almost a constitution.'[972]

Both parties showed that they associated the constitutional rhetoric and symbols of which the Convention availed itself, with the process of (federal) state forming. In itself, this association was not surprising. All historical examples of processes of drafting a Constitution were connected to forming (federal) states and with the European Union getting one, including its own catalogue of fundamental rights, the association was logical.[973] The element in their considerations that was contested, by, for instance, the CU, was that Giscard D'Estaing was not working on a real 'Constitution', but a 'constitutional treaty': 'The term "constitutional treaty" has a considerably greater appeal for my party.'[974] In this line of reasoning, there was no eye for the fact that this distinction could not be held to guarantee anything. Technically speaking, eventually, also a constitutional treaty might develop into a formal constitution.

Apart from whether the use of the term constitution was desirable, disagreement existed on what (kind of) provisions a European Constitution should contain. The SP, for instance, got up in arms against the proposal of the Convention for Chapter 1, Article 3, subsection 2. This article stated that 'the Union shall offer its citizens […] an internal market where competition is free and undistorted.' In the eyes of the socialist senator Tiny Kox it was rather strange that a European constitution would formally uphold the principle of 'free, unalloyed competition', as Kox interpreted the article, 'whereas such a thing cannot be found in the Dutch Constitution.'[975] Following from this thought, he reasoned that this article might be incompatible with the Dutch constitution, to which – Kox added with a sense of pathos – he had sworn allegiance.[976] His colleague from the Lower House, Harry van Bommel, cast similar doubts with regard to the recording of the Charter of Fundamental Rights: 'How do these rights relate to the constitutional rights of the Kingdom of the Netherlands?'[977]

Although these remarks did not essentially differ from earlier comments on the compatibility of European Treaties and the Dutch constitution – situations for which Article 91.3 of the Dutch Constitution was once designed – the fact that the European Treaty was called a Constitution, added a new dimension to the discussion. Van Bommel warned of what he called 'constitutional bigamy'.[978] On a meta level, the adoption of a European Constitution could be seen as the ultimate departure from the Dutch constitution. Was the adoption of a European constitution, roofing over the constitution of the Netherlands, also covered by Article 93, subsection 3?

The dissension in the Dutch parliament on what a European Constitution should and should not regulate went beyond the division

between staunch supporters and convinced antagonists of further European integration. Constitutional expert and senator for the Dutch labour party, Erik Jurgens (PvdA), opposed the proposal of the Convention to record in the constitutional Treaty that the European Union 'shall maintain an open, transparent and regular dialogue' with the churches; a provision foreign in kind to the Dutch constitution.[979] Emphasising that he was associated with a church himself, Jurgens expressed his concern that churches were mentioned here in particular and no other organisations: 'Then there might be people who say that this is discriminatory.'[980] GroenLinks supported his view: 'Actually it is something that should not be part of a constitution.'[981]

The issues brought up by Kox, Van Bommel and Jurgens show the essential challenge resulting from the European Convention: reconciling diverging ideas on the character of a constitution, on what it should contain and on what the European Union should do or not do. Fundamental questions from the perspective of defining a political identity and diverging ideas on this identity came up, not only among the various Member States but also among political currents within these Member States. An issue, discussed in the Convention, truly showing the complexity of reaching agreement on the European political identity, is the drafting of a preamble; a topic that exercised and divided many minds in the Dutch parliament.

First of all, Giscard's wish to record a preamble in the constitutional treaty was controversial in the Dutch parliament. Groen Links was among the most unequivocal in its denouncing of the idea. In the plenary debate in the Upper House senator Leo Platvoet (GL) remarked that formulating a preamble was not necessary. Taking the Dutch preamble-less constitution as an example –another illustration of the sober and pragmatic constitutional culture in the Netherlands – he argued that a constitution could perfectly do without it: 'It is said that a preamble should be part of a constitution, but […] the Dutch constitution has not got such a preamble. I think that is not an argument.'[982] On the level of its content, the Dutch parliament was divided up into those who did (the CDA and the protestant-orthodox parties), and those who did not (the liberal and socialist inspired parties) deem it desirable that, next to the mentioning in the preamble of the humanist tradition, reference should be made to the Judaeo-Christian tradition of the European continent. For obvious reasons, the reference appealed to the first group. The liberal and socialist inspired parties in the Netherlands feared that the explicit Christian orientation would work as a symbol of exclusion; not only for persons within the Union who did not feel connected with the Judeo-Christian tradition, but also

for candidate members – Turkey for instance – to which this reference, which strongly referred to the religious history of western Europe, would not appeal.

On 10 June 2003, a group of MP's, headed by the D66 MP Lousewies van der Laan, D66, VVD, PvdA, Groen Links and the SP introduced a motion in the Dutch Lower House which requested the government to oppose in the upcoming IGC (October 2003-June2004) the recording – both in the preamble or in any of the articles of the Treaty – of 'references to a specific European religious foundation.' In search for a remedy against Jurgens' complaint mentioned in this section, the motion was also aimed 'against provisions which give church institutions a special place compared to other social organisations .'[983] The motion was based on the considerations that the principle of separation of church and state was an important foundation of both the Dutch and the European constitutional order, and that the reference to a religious basis was alien to the Dutch constitution. Together, these parties held a majority in parliament and consequently the motion was adopted.[984] In the Upper House, a similar motion rejecting a special position for the churches was proposed and adopted by the same parties.[985] With these motions, the preference of the Christian parties in parliament for a reference in the preamble to a Judaeo-Christian tradition was pushed aside.

Or was it not? Telling for how this matter kept the Dutch political community divided and typical again of the political culture in which the government was used to being granted freedom in international negotiations, the motion seemed to fall on deaf ears with the government. When it became known that, in defiance of the various counter motions, prime minister Jan Peter Balkenende had supported German, Polish and Italian Christian-democrats at the IGC in their pleas for a specific religious reference, those who had submitted the respective motions, especially the ones in the Upper House, were not amused. 'Does the government take the motions seriously indeed?', Erik Jurgens called out in annoyance.[986] The constitutional specialist denounced this form of 'politics of ideology' which, in his view, could not be legitimised on the basis of any national interest.'[987] The Christians of the CU, on the other hand, complimented the Christian-Democrats throughout Europe on a 'nice, proactive proposal.'[988]

At first sight, this political fuss in the Netherlands might be seen as a detail, not to be dwelled upon. But behind the debate an important new dimension is hidden. It certainly shows that the constitutional treaty could not be seen as merely dealing with the division of power. Essential questions of political identity were raised here: how would

the European polity define itself and how would this relate to the historically and culturally grown self-definition of the Dutch polity? The contestation on the content of the preamble demonstrates friction between, on the one hand, the foreign policy reflex of pragmatically focusing on power division, beneficial partnerships and moving along at the European negotiations table and national cultural traditions on the other. Uneasiness regarding the effects of European integration on national identity, in other words, already present in the intellectual debate since the 1990s, was searching its way into the political domain.

In addition to the question whether the term 'constitution' or 'constitutional treaty' should or should not be used in relation to the European Union and the matter of the preamble as an indication of the dilemma on what the constitutional treaty should or should not contain, a third issue of contestation to be inferred from the Dutch debate was if and how the new treaty related to the ultimate objective of European integration. In parliament still no consensus existed on whether the Union should take the form of a federation or should remain a looser – '*sui generis*' – association of states cooperating only in certain fields. In the period running up to the start of the Convention, the PvdA had stated that it considered the traditional antithesis of intergovernmental versus supranational to be superseded: 'Europe will always keep that hybrid character.'[989] It held the view that this would not be changed by the adoption of the new, constitutional treaty for Europe. In the same debate, the SP and SGP both indicated that they saw the initiative of the development of a European Constitution to be strongly interwoven with the attempt to turn the European Union into a full-dress federation.[990] And also the CDA showed to have its eye, ultimately, on a federal structure for it still believed that this would (pre)serve the Dutch 'singularity' best: 'if one wants to preserve a considerable degree of national individuality and national legal culture, the federal method is actually the only method to guarantee that national individuality'[991]

These divergent perceptions of the structure of the Union and the significance of adopting a constitutional treaty for this structure, indicates that in terms of constitutional conceptualisation the European Union was still contested within the Dutch political community. This leads to the observation that while the Dutch polity was working towards a constitutional treaty, it had not yet reached agreement on what exactly should be constituted. And also on the European level, this was not explicated. This most probably was what the former European judge, Jos Kapteyn, criticised in his 2002 oration when – citing the words of the American lawyer Paul Kahn – he argued: 'The

political community must already understand itself in a certain way for the project of constitution writing and popular ratification to make sense'.[992]

A fourth and last issue that concerned the minds of many parliamentarians participating in the debates, was how to 'democratise', i.e. involve the Dutch people in the drafting process and adoption of the constitutional treaty. The constitutionalisation of Europe, as it was viewed by various parties in the Dutch parliament, was a process that presupposed, if not the will of the people, then at least their interest. But even in parliamentary circles, senator Erik Jurgens (PvdA) observed disappointedly, this interest seemed to be lacking: 'It is characteristic that as soon as Europe takes the floor the audience leave the room.'[993] Member of the Convention on behalf of the Lower House, Frans Timmermans (PvdA), argued along the same line: 'Look around in the room: again we are together as Europe-minded people who are interested in the subject anyhow. […] Everybody who is always present, was present again: the European Movement, the FNV [the biggest Trade Union in the Netherlands], the churches.'[994] Combined with the observation that in the country a basic attitude had developed of 'the only things that come from Europe are bad things', they were reasons for Timmermans to worry about the future of the integration process.[995]

The PvdA was confronted here with the logical, but unintended result of the administrative culture it had co-built and supported since 1953. Having structurally contributed to the preservation of the freedom of the government to act as it saw fit on the European stage and the habit of approving even the most far-reaching decisions without insisting on exceptional conditions, the political mainstream had from the early 1950s onwards contributed to a lack of fundamental political debate on the why's and wherefore's of European integration. As far as the process was debated in non-political circles – in academia, interest groups and, over time increasingly, in the media – the fundamental questions and criticism raised there, had never really been translated into political action in parliament, let alone translated to or discussed with the Dutch people. With a stable parliamentary majority in favour of progressive European integration and a national constitution functioning rather as a floodgate than a dike *vis-à-vis* the European legal order, such a debate had never been necessary from the point of view of political practice. The price, however, as it became visible in this new process of treaty making in which the involvement of the Dutch people was desired, was a lack of interest in and sense of affinity with what actually occurred on the European stage.

The social-democrats were not alone in observing and disapproving of a disconnection between those designing the new treaty and deciding on it and the Dutch people at large. From the most ardent advocates of a constitutional treaty to its fiercest critics, the will existed to bridge the gap that was felt to develop. Starting from different political angles, various parties came with the idea to break the lethargy of the Dutch people, in line with what GroenLinks had already proposed in the approval procedure on the Treaty of Nice: in the Netherlands a referendum should be held on the result of the Convention.[996]

In the first years of the new millennium the political tide for the introduction of the referendum as a decision making instrument was favourable. *Leefbaar Nederland*, Pim Fortuyn and his LPF had pleaded for more direct involvement of the Dutch people in political decision making. D66, by its political nature, was in favour of administrative modernisation and, as a consequence, also of the introduction of the referendum as a means of decision making. As a coalition partner in the first Kok cabinet the party – together with the PvdA and VVD – had been responsible for putting forward a bill in parliament introducing the instrument of a corrective binding referendum. After this bill had been rejected,[997] in July 2001 the Temporary Referendum Act – an act by which the Dutch people could insist on a consultative, not binding referendum – was adopted. With regard to organising a referendum on the result of the Convention, however, this act was not considered sufficient, since it left the initiative to insist on a referendum to the Dutch people and a referendum could only be held *after* the Lower House had approved the new treaty. In this particular process of European constitutionalisation, the only right way to involve the Dutch nation was getting to know its judgement on the treaty before the parliamentary approval procedure

To this end, on 20 May 2003, the Bill on the Act Consultative Referendum European Constitution,[998] was submitted by the MPs Farah Karimi (Groen Links) – the party that, since Maastricht, had pleaded for a referendum on crucial new steps in the integration process – Niesco Dubbelboer (PvdA) and Boris van der Ham (D66).[999] The bill laid down that if a constitutional treaty came about and had been signed by the Dutch government, the treaty would be presented for approval to the Dutch people before parliament would vote on it. Moreover, it was proposed that there would be no electoral treshold.[1000] The proposal, the explanatory memorandum shows, was founded on three motives: a positive outcome of the referendum would contribute to the legitimacy of parliamentary approval, the referendum

itself would encourage political participation and, lastly, a popular referendum was considered to form an important impetus for a public debate on European integration.[1001]

With suggestions for the introduction of referenda being more or less common in the Dutch political domain in these years and this Bill thus perfectly matching the 'spirit of the time', it is easy to overlook the breakthrough that this proposal implied for the traditional decision making procedure concerning European treaties. It was the culmination of political pleas, which had been gaining strength since the Treaty of Maastricht, in which it had been argued that the process of European integration had progressed so far that it was high time to improve the approval procedure and/or give Dutch citizens a vote. As such, the proposal attacked the old consensus, guarded by a political majority since 1953, that for new European treaties a single parliamentary majority in accordance with Article 91, subsection 1 of the Dutch constitution sufficed, as long as deviation from the constitution was not clearly observed by a parliamentary majority; a thing that in political practice had never been the case. The proposed break with this constitutional tradition came with a risk: notwithstanding the consultative character of the proposed referendum, if the people of the Netherlands rejected the new treaty, it would be hard for parliament to justify a vote in favour. So the advocates of progressive European integration made themselves more vulnerable to a negative outcome; a fact that is likely to have contributed to the CDA voting against the proposal.

In the Lower House, in November 2003, eleven months before the Member State governments would eventually put their signature under the new treaty, a debate on the bill, in two terms, took place. Logically following from the proposal to break the fifty-year-old tradition of approving new European treaties with a simple parliamentary majority, the question came up why the new draft treaty legitimised a new approval procedure. The main argument of the initiators was that the constitutional Treaty was not another revision of the Treaties of Rome, but an unprecedented 'milestone in the history of European integration.'[1002] In addition to pointing out the benefits that a referendum would yield in bringing about a public debate on European integration and strengthening the legitimacy of a parliamentary vote in favour, the particular character of the treaty, Farah Karimi (GL) claimed, made a special approval procedure necessary.[1003] This special character was to be found in the new and/or further reaching conferral of competences in the fields of foreign affairs, criminal law and the adoption of the human rights catalogue.

The main rebuttal of the CDA, which was not too fond of the idea of a referendum, was that it was not convinced that the constitutional treaty was different – in kind – when compared to previous European Treaties and therefore, in their view, the plea for a different form of approval lacked validity.[1004] The party protested the stance that important competences were transferred and emphasised that – contrary to what the bill on the referendum suggested – just another treaty was to be signed here; a treaty that would by no means take the place of the Dutch constitution.[1005] In rejecting the introduction of a referendum, the CDA was supported by the SGP and CU, which were of the opinion that the IGC should express itself on the treaty before the suggestion of a referendum could even be considered.[1006] Moreover, these three parties, but in particular the SGP, wondered, even if the new treaty was really special from a constitutional point of view to such extent that a special approval procedure was needed, why there should be this insistence on approval via referendum instead of approval in accordance with article 91, subsection 3 of the Dutch constitution – the article asking for approval by a two-thirds parliamentary majority? It had been designed for Treaties with a great impact on the Dutch constitution and therefore approval of the constitutional Treaty in accordance with this article would match the constitutional logics in the Netherlands more than introducing the instrument of the consultative referendum.[1007]

From defence towards consensus

Since the document produced by the European Convention had no formal status until it had been approved in the IGC that followed it, the parliamentary debate on the draft treaty could only have a provisional, open end. Nonetheless, the arguments and remonstrations against the various concerns in parliament are interesting here as portents of what was to follow.

With regard to the parliamentary doubts and criticism on the use of the term 'constitution' in relation to the European Union, it stands out that Balkenende and his colleagues in government tended to distance themselves from this choice. Not accepting responsibility for the political choices of the second Kok administration which was involved in the negotiations in Nice and Laeken, the State Secretary of European Affairs in both Balkenende cabinets, Atzo Nicolaï, stated: 'Nor is it our choice, but the Laken Declaration already makes mention of a Constitution for Europe.'[1008] By means of this *fait accompli* line of reasoning the responsibility for the name of the Treaty was rhetorically

shifted from the current cabinet to a time in which others were in charge.

Adding to the conceptual complexity of the discussion instead of clarifying it, Nicolaï went on: 'What we do want is a treaty which includes fundamental principles. That treaty may be called a constitutional treaty then. That way it has been put somewhat more precisely.'[1009] On the exact conceptual difference between the two Nicolaï kept silent, but from the following remark in the Upper House it can be inferred that a qualitative difference was intended here: 'You might call it a constitutional treaty, but from a legal point of view it cannot be called a constitution.'[1010] It seems that Nicolaï thus tried to downplay ideas circulating in parliament, that something extremely special was to happen here, upgrading the European Union to a statelike entity. Prime minister Balkenende reinforced Nicolaï's claim: 'In essence the European constitution remains a treaty and it has no other influence on Dutch laws than normal treaties.'[1011]

Interestingly, parallel to this downplaying of the impact of the constitutional Treaty, the consequences of rejecting the Treaty were blown up by the Dutch government. Similar to the attitude of the various successive governments in previous debates on the approval of European treaties, misfortune was predicted in case the treaty was not approved. An example is found in the following words of Jan Peter Balkenende: 'There is much at stake of course. Do we choose in favour of stagnation, that is decline, or do we opt for progress?'[1012] According to him, 'the fall-back option Nice' was the only alternative in case the IGC negotiations on the new treaty failed.[1013] Since Nice offered less in terms of transparency, democracy and decisiveness, the government and those supporting progressive integration agreed, such a relapse should be prevented.[1014]

One wonders whether these opposite movements – downplaying the legal implications of the new treaty while simultaneously emphasising the importance of its approval – benefitted the government in reaching its political goals. Indeed, this strategy had been applied before and in circumstances when a stable political majority was in favour of new steps towards further European integration anyway. It had never caused any damage. This time, however, the government had to deal with the possibility of a popular referendum, introduced in the approval procedure. The organisation of such an event implied that the Dutch people should be convinced of the value, purpose and/or harmlessness of this new step. Strongly emphasising the importance of the new treaty, while distancing itself from its constitutional title, aura and implications, defied basic

lessons in political communication of unambiguousness and staying on message. A thing that, the course of the approval procedure would show, would backfire on the Balkenende administration.

The issue of elements that the constitutional treaty should and should not contain and how to harmonise it with Dutch cultural and constitutional traditions was disposed of in a few words. It was dismissed with the remark that the government would keep an eye on the matter and – to this end – had asked the Council of State for a preliminary advice.[1015] With regard to the recording of a preamble in which specific reference to an underlying Judeo-Christian European religious foundation would be made, the government, it has been stated already, obstinately pursued its own course; an attitude resented by parliament and, as a result, contributing to political contestation about the draft treaty.

Leaving all options open as it had been the custom for five decades, the government did not give in to the temptation of being coaxed into a final statement on the eventual end that the new treaty would lead to; a remarkable thing, as the concept of the constitutional treaty had its origin in the discussion on *finalité* of the process of European integration. Apparently pragmatic as ever, the government refused to commit itself to a scenario that after signing and ratification of the draft treaty the integration process would be completed. Protesting against labelling the new treaty in terms of the bringing about of a European federation, i.e. *finalité*, the experienced diplomat and Minister of Foreign Affairs under Balkenende II, Bernard Bot (CDA), who had succeeded Jaap de Hoop Scheffer in December 2003 after his departure to NATO, claimed in parliament: 'For if you want *finalité,* it is over and that is actually a thing all of us do not want!'[1016]

Bot, however, did not make clear what 'all of us' wanted then. He clearly did not reckon with the growing minority of political antagonists of progressive integration. Had the aim of 'an ever closer Union – set in Rome in 1957 and supported ever since – made way for the even more intangible ideal of a never ending process of unification? Or did the draft treaty, from a Dutch perspective, not succeed in making the Union close enough? Such questions were not dealt with.

The parliamentary initiative for a referendum had taken the government and others closely involved in the process of the Convention by surprise. While negotiating the treaty, diplomats had never reckoned with this possibility as is revealed by the Permanent Representative of the Netherlands with the EU in the first stage of the Convention, Bernard Bot:

> 'We thought it was going to be ratified, it was a beautiful treaty and yes, that is a treaty which will help us a bit forward. […] No one of the negotiators in those days dreamt of us getting into the ditch of a referendum.'[1017]

Not surprisingly, therefore, the government was by no means enthusiastic about the proposal of GroenLinks, Pvda and D66. In line with how successive Dutch governments had structurally approached international negotiations, it was considered of great importance that once the cabinet would give its signature to the treaty in the IGC, the treaty would be approved on the national level. As long as everything was dealt with within the walls of parliament, as had until then always been the case, the government had little to fear. With the mostly pro-European parties of CDA, VVD, D66 and PvdA still having 120 of 150 seats in parliament, they simply had the support of a majority and even if it was decided to take the path of Article 91, subsection 3, a two-thirds majority was within easy reach. The experiment with the referendum, however, would in this regard introduce an undesired unpredictability.

The argument in which the government wrapped its dissatisfaction with the proposal varied from the remark that in a referendum, voters never strictly stuck to the question they were supposed to give their verdict on – referenda far too easily got the character of 'a plebiscite for or against government policy in general' – to the concern that a referendum might result in the loss of precious time, leaving the European partners waiting for the Netherlands and the view that if a referendum should take place at any cost, the arrangements as prescribed by the Temporary Referendum Act would suffice.[1018]

Unfortunately for the government, however, the initiators of the referendum received important support for their initiative from the highest legal advisory board in the Netherlands: the Council of State. In its advice on their bill of 14 July 2003, invalidating the governmental claim that the document was nothing special, the Council referred to its position concerning the special constitutional character of the Treaty. It stated that:

> 'in the European Constitution the […] Charter of Fundamental Rights will be included […] Fundamental rights are an essential element of a Constitution in a democratic constitutional state. Moreover, by accepting the treaty to establish a Constitution for Europe one European Constitution comes into being, in which the (altered) institutional relationships and decision-making […] will be settled.'[1019]

Because of this special constitutional character, the Council of State continued, 'Approval of the treaty […] could to a certain extent be likened to a constitutional reform.'[1020] Therefore, the Council advised an approval procedure more in line with the procedure applied in case of a constitutional reform.[1021]

Something fundamental is indicated by this fragment from the advice of the Council of State. Here it becomes clear that the introduction of the terms 'fundamental rights' and 'constitution' opened the way for a different form of approval in the Netherlands. After fifty years of applying the constitutional logics of Article 91 another route was advised in relation to the Treaty Establishing a Constitution for Europe. The constitutional elements of this treaty, were crucial in effectuating this shift in the procedural perspective on the organisation of a referendum.

For the Council to reach the conclusion that a referendum was to be held on the basis of the observation that the new European treaty had constitutional implications, certain remarkable mental leaps were needed in which practical objections went before accepted procedures. In the Dutch constitution it was laid down that, in case of a constitutional revision, Article 137 applied. The article provided for the processes of constitutional revisions to be approved via two readings in parliament, with the dissolution of the Lower House and new elections in between. In addition it set out that, in the second reading, a two-thirds majority in both Houses was required.[1022]

The key-element of the article was that it guaranteed the organisation of elections. In this way the consultation of the people was provided for. In relation to the approval of the constitutional treaty, however, this element was considered as a setback since the dissolution of the Lower House and the organisation of elections would delay the ratification procedure of the Treaty considerably. For that reason, the Council of State agreed with the initiators of the bill that the organisation of a consultative referendum might be a good alternative. Since a referendum would imply a consultation of the people – the key-requirement of Article 137 of the Dutch constitution – and would in addition come with some organisational benefits, the Council argued, approval via a referendum should be preferred.[1023]

Substituting the procedure of Article 137 by a referendum was far from obvious. On this point, the exact reasoning of the Council of State remains mysterious. In its advice the advisory board stated that implementation of the procedure as stated in Article 137 was 'for various reasons not very realistic' and that a referendum would be a good

substitute.[1024] It failed, however, to substantiate these claims with clear legal logic. Also the Constitutional Department of the Dutch Ministry of the Interior was amazed: 'That they were rather uncritical and supported the idea of a referendum, that was a surprise.'[1025] The advice again illustrates how in the Netherlands, at certain crucial moments in history, practical objections from a foreign policy point of view were given priority over fixed constitutional principles. This time, however, those in favour of progressive integration were going to pay for this.

6.4 A Harsh Reality: Towards 1 June 2005...

On 25 November 2003, the private member's bill Karimi/Dubbelboer/Van der Ham was adopted in the Lower House by a broad majority; GroenLinks, PvdA, D66, VVD, LPF and SP voted in its favour. On 25 January 2005, approval in the Upper House followed.[1026] In between these voting rounds, the long awaited IGC took place in which the leaders of government of the EU Member States considered the result of the Convention. During this IGC, the 'frame' of the treaty, as regards its title, the recording of the Charter of Fundamental Rights and the like, was left intact. But issues regarding the division of power, between both the institutions of the Union and the various Member States, needed to be settled before an agreement could be reached. Illustrative in this respect are the long-winded discussions on the number of Commissioners in the European Commission. The small EU Member States feared the relative loss of power if the principle of one commissioner per state was to be abandoned. There were worries about the preservation of the right of veto in various policy areas, budget matters being one of them, and, last but not least, difference of opinion on the content of the preamble had to be bridged.

After various preparatory meetings of the ministers of foreign affairs in May and June 2004, in which the various bottlenecks were diplomatically dealt with one by one, the European leaders reached an agreement on a new treaty at the summit of 17 and 18 June 2004. On 29 October then, the Treaty Establishing a Constitution for Europe was signed in an official ceremony on the same spot where it had all started in 1957: the *Piazza del Campidoglio* in Rome.

The signing ceremony occurred under the chairmanship of the Netherlands; a organisational particularity that the Dutch, keen on international prestige, did not intend to let pass unnoticed. The government had designed a pen for all signatories, made of platinum and wood, bearing a Latin text referring to the occasion and its Dutch chairmanship: 'the European constitution has been signed

during the Dutch chairmanship of the European Union in Rome on 29 October 2004.'[1027] It seems to have been meant to be a lasting memory of the Dutch positive contribution, in a crucial role, to what would be – anticipating a positive outcome of the ratification procedure – a historic step in the history of the world: the formal constitutionalisation of the EU, which would make all previous European treaties irrelevant.

Starting with a preamble in which they, among other things, expressed to 'draw inspiration' from the 'cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law', the EU Member States declared to be set on transcending 'their former divisions and, united ever more closely, to forge a common destiny.'[1028] The 1957 objective of 'an ever closer union' had, by now, been translated into a state of being in which the 'unitedness' of the members was presented as the new starting point to work from. After the preamble, an immensely complex text of 500 pages followed, not easy to read, let alone fully to be fathomed, even by experienced lawyers. It consisted of the Charter of Fundamental Rights – the EU henceforth formally had its own fundamental rights catalogue, in addition to those of the individual Member States – a part on the general policy lines of the Union, some final remarks on the working, continuity, revision, etcetera of the treaty and an extensive series of additional protocols and annexes. Nowhere, however, did the text become concrete on the constitutional form of the EU. Was it a confederation, a federation or something else? A question that remains unanswered in the text of the treaty, but on which various authors in the Netherlands were clear. They viewed the treaty as another step in the taking shape of a (federal) statelike European structure.[1029]

The position of the government

Considering its efforts to close the IGC with a signed agreement, it is not to be wondered at that the Balkenende II cabinet fiercely defended the treaty in parliament. Of course, the government was politically strongly devoted to get the treaty approved. In the week after the closing of the June summit, the government emphasised the institutional improvements that approval of the treaty would bring. The strengthening of the position of the Commission and the European Parliament *vis-à-vis* the Council, for instance, matched the old wish of a political majority to supranationalise and democratise the EU institutions. Extending decision making by the method of QMV

had succeeded whereas – also corresponding to Dutch preferences – budget matters remained to be decided on the basis of unanimity.[1030] The original objectives of the Laeken Declaration, the ambitions of the government and the eventual result of the negotiations were put side by side by the Dutch government:

> 'more transparency, more democracy and more decisiveness […] The government is of the opinion that this treaty is good for Europe and for the European citizens. […] Besides, priorities given by the Netherlands, can be easily found again in the result of the negotiations. The treaty is also good for the Netherlands.'[1031]

On the issues of institutionalisation of a permanent president of the European Council and a specific Judaeo-Christian reference not being recorded in the preamble of the treaty[1032] – fields in which the Dutch government had not reached its initial goals and had, in fact, suffered quite heavy diplomatic losses – the government stated that it had accepted the compromises reached.[1033]

In the formal written presentation of the treaty to parliament, the government went all out on the significance of the new treaty. With regard to its formal title and its Dutch abbreviation as the 'European Constitution' it pointed to the further-reaching conferment of competences of the Member States on the European level of governance, the progress made in bringing about a separation of powers on this level, and the recording of the Charter of Fundamental Rights. On the basis of these various aspects, it concluded that the new treaty showed 'such likeness to national constitutions, in a political sense at any rate, that it can be said to be a constitution.'[1034] Stressing its political importance further, the government in a rather contradictionary way stated that the treaty at issue was to be seen as the 'provisional final [sic!] piece' or, more unequivocal, 'the pinnacle' of an institutional and substantive political reform which had been started with the SEA in 1986.[1035]

Interesting in relation to this emphasis on the special political importance is the conclusion of the government, expressed in the explanatory memorandum, that the new treaty did not relate to the national constitution of the Netherlands in any specific way. In a, by Dutch standards, extensive section on the constitutional aspects of approval of the new treaty, the government explored the provisions of the European constitution on the basis of which incompatibility with the Dutch constitution might be established; a situation that would lead to the conclusion that, in parliament – regardless of the

result of the consultative referendum – a two-thirds majority (Article 91, subsection 3) in favour would be needed in order to approve the treaty. In particular, the government indicated, it had scrutinised those treaty provisions in which 'competences of a completely new character' would be created for the EU.[1036] The government counted six in total.[1037] Among these issues were the precedence of Union law over national law, which was explicitly laid down in the new treaty (Article I-6), a series of exclusive competences of the Union (Article 1-13),[1038] and the exclusive competence of the ECJ to rule in conflicts related to the application of ownership rights, established by the new treaty, whereas previously community patents had been dealt with before national judges.[1039] On all these and some more issues, the government reached the conclusion that the provisions in the treaty were nothing more than the formal treaty confirmation of customs and jurisprudence that had developed in the previous decades and that the Dutch constitution did not mention the impossibility of transfer of such competences.[1040] In each separate case, the government underlined its conclusion with references to the Dutch constitutional tradition of openness *vis-à-vis* the European order. Concretely, it referred, repeatedly, to Article 92, which made the conferment of competences on international organisations explicitly possible and also, in its defence, to the motion-Brinkhorst c.s. of 1980, which stated that 'in case of doubt, provisions of the Constitution should be explained in such a way that the European integration process is not hindered by it.'[1041]

In its appeal to the constitutional tradition of openness, in order to have the new treaty approved by a simple parliamentary majority, the Balkenende administration ignored the Council of State's advice on the Bill Karimi/Dubbelboer/Van der Ham of 14 July 2003. No attention was paid to the conclusion of the Council that to the new treaty could be attributed a special constitutional character and that for that reason its approval could to a certain extent be likened to a constitutional reform and should be treated accordingly.[1042] In spite of the Council's observation that this new treaty deserved a special approval procedure – the observation on the basis of which the Council had advised in favour of a consultative referendum – the government stuck to old parliamentary conventions. These conventions, it has been pointed out, had hitherto systematically worked in favour of the political aim of the government, i.e. a smooth parliamentary approval of new European treaties without hiccups or undesired delays. The fact that this time a consultative referendum would precede the approval procedure in parliament, did not seem to alter anything in the view of the government. In the explanatory memorandum, it did not pay any

substantive attention to the consequences of the organisation and the possible results of such a referendum.

The Council of State noted the strong reliance of the government on fixed constitutional traditions in relation to the new, rather untraditional Constitution for Europe. And although the Council did not meddle with the conclusion of the government that there was no direct conflict between the provisions of the EU constitution and the national constitutional provisions, on the basis of its form and provisions it concluded that with the adoption of the first, the latter needed to be adapted. According to the Council, Article 92 of the Dutch constitution for instance, stating that 'organisations under international law can by, or by virtue of an agreement be assigned powers of legislation, administration and jurisdiction', which had been regarded for many years as the basis for the transference of sovereign competences to the EEC/EU, did not comply with the European reality any longer after the new treaty entered into force.[1043] European decision making, the Council explained, to an ever greater extent could only be partly seen as a product of an internal, European process of decision making: 'To be sure, the final voting behaviour in the Council of Ministers is determined by instructions agreed on in the [Dutch] Meeting of the Cabinet, but although Dutch people do participate in many European bodies, 'the Netherlands' itself does not.'[1044] The Council argued that, by now, the European and national constitutional structure had become interwoven to such an extent, that the Dutch constitutional qualification of participation in the process of European integration – as it had existed since 1953 – did no longer satisfy:

> 'Now that the European Union explicitly shows itself to be a constitutional order, the Council thinks that the moment has come for the Kingdom of the Netherlands not to confine itself any longer in its Constitution to general rules for participation in organisations under international law. That is why the Council recommends […] an explication of the desirability of a constitutional provision geared to the character of the EU.'[1045]

Here the formal constitutional manifestation of the Union by way of the new Treaty was marked as a development with implications for the national constitutional order and traditions as they had developed since 1953. It was a call for a parliamentary reconsideration of those constitutional arrangements which had structurally guaranteed the Dutch government its freedom to act on the international stage.

The Dutch government was of course not immediately afire with enthusiasm when confronted with this view. In its reaction to the Council's stance it remained deaf to the recommendation of a revision of the Dutch constitution; something strategically comprehensible because this matter was of no immediate importance to the central question whether the new treaty would be approved or not and, moreover, not in the direct political interest of the government. The silence of the government, however, did not alter the fact that the question on compatibility of the European integration process with the Dutch national constitutional order had been brought up. Again, and just before the run-up to the Dutch referendum on the Constitutional Treaty was about to begin.

Debate in and outside of parliament

Since the Dutch States-General, by means of a vote in favour in the Upper House in January 2005, had accepted the idea of organising a consultative referendum on the Constitutional Treaty, the parliamentary order laid down that a parliamentary debate on the approval of the European Constitution could be held only after such a referendum had taken place. Nonetheless, in parliament many had an opinion of course on the result of the IGC and did not hesitate to express it whenever they got the chance.

On 23 June 2004, less than a week after the June summit and more than six months before the referendum had been definitely decided on, the political parties in the Lower House could give their first reactions to the constitutional treaty. In the autumn of 2004, various other debates followed as part of the debate in parliament on 'the State of the European Union' – the annual report of government, introduced in 1999, by which it expounds on its European agenda of the upcoming parliamentary year – and after a new bi-annual meeting of the European Council had taken place. Moreover, the parliamentary Committee on European Affairs made a study of the treaty, in preparation of a plenary debate, which it finished in late April 2005; only a month before the referendum would take place eventually.

Although the proceedings of the Committee on European Affairs show that many questions existed with regard to the new treaty, in general it can be observed that the final result of the IGC did not change the views in parliament as they had developed since the start of the IGC in October 2003. Depending on their political colour, the advocates of progressive European integration saw various shortcomings and flaws in the final treaty. Eventually, however, the parties of the political mainstream (PvdA, D66, CDA and VVD) adopted once more

– in parliament little had changed in all these years – the argument of succession-line of reasoning as is clear from, for instance, the words of one VVD MP's: 'The question then is: is the constitutional treaty a change for the better compared to Nice or is it not? […] My conclusion is: those who approved the Nice Treaty, now have an extra reason to approve this constitutional treaty.'[1046]

In campaigning against the constitutional label and characteristics of the document, the Protestant-conservative parties, as always amongst the most sceptical about the process of European integration, also stuck to their old convictions and argumentative structures. André Rouvoet of the CU for instance stated: 'We are not (….) waiting for a constitution and this is supposed to be a constitution'[1047] This view was supported by the SGP, the LPF, the SP and the MP without party affiliations Geert Wilders.[1048] Apart from the constitutional label, these parties objected to what they saw as pitfalls of the Treaty. The SGP, for instance, fumed at the text of the preamble, in particular at the lack of an explicit reference to the Judaeo-Christian heritage, a thing which this Conservative-Protestant party had liked to have seen incorporated in the text. The SP still protested against, among other things, the 'neoliberal character' of the constitution 'which demands competition in all fields.'[1049] These were by no means surprising notes from these parties that had, just like its predecessors, structurally criticised the necessity, character and content of the constitutional treaty. So far, the Dutch political settling of the Treaty Establishing a Constitution for Europe predicted few or no surprises.

A new and uneasy experience: campaigning for treaty approval

In the first semester of 2005 there was a drastic change in the business as usual character, when, after the Upper House approval of private member's bill Karimi/Dubbelboer/Van der Ham, preparations started for an event that had not taken place in the Netherlands since 1797: a national referendum. In early February 2005, an independent committee had been set up by the Lower House that would take care of all practical matters related to the organisation of the referendum. Its main tasks were to set the date of the event, to formulate the referendum question, to provide the Dutch citizen with an objective, non-political summary of the treaty and to supply both advocates and opponents of approval of the treaty with subsidy budgets for media-campaigns in which they could make their views public. The committee consisted of various former politicians of divergent political currents and did its work under the chairmanship of the professor of Constitutional Law, Tijn Kortman. On 23 February, it was announced

that the date of the referendum was set for 1 June 2005. The question that would be presented to the Dutch people was: 'Are you in favour or against approval by the Netherlands of the Treaty Establishing a Constitution for Europe?' In deliberation with parliament it was agreed that the government would be responsible for a campaign in favour of approval of the treaty.[1050] The availability of politically neutral information on the treaty would be guaranteed by the independent referendum committee.

In February 2005, still, little firework was expected from the governmental campaign in favour of approval of the treaty. Although recent years had shown a clear increase in the political and public criticism and doubts on the process of European integration, the *Eurobarometer* of late 2004 had still shown a Dutch majority of over 70% supporting membership of the European Union in general.[1051] On the particular issue of the adoption of a European Constitution – regardless of the exact text of such a constitution, since that was not yet known among the wider public – even 73% had responded in support.[1052] These were figures that, certainly in combination with an over 80% support in parliament for the new treaty, must have inspired great confidence in a positive outcome with the Balkenende II cabinet.[1053]

In the campaign, however, week after week the 'yes'-camp saw its chances diminishing. The referendum and the campaign leading up to it, implied a completely new game for the members of government, who were the product of a political culture that had since 1953 reserved decision making on European affairs to a homogenous governmental and parliamentary elite which had structurally avoided the development of a public debate on the subject. Now that approval of successive European treaties had hardly been taken any notice of by the Dutch society at large and this nationwide debate on their use, necessity and consequences had therefore never really developed, the government now was given the task to make its case in favour of the constitution for the Dutch people and to convince them that this was a great thing, worthy of approval. They turned out not to be really cut for that role.

Summarising the many remarkable acts and statements from the side of the Dutch government between the announcement of the referendum in February and its actual occurrence on 1 June, the first sign of this unease with its new role was the refusal of various members of government to actively campaign in favour of a 'yes.' Famous and illustrative in this respect, is the remark of then Minister of Finance Gerrit Zalm (VVD) that he 'did not like flyering.'[1054] A second

indication of the government operating out of its comfort zone was the publishing and selling of the 'constitution paper' in March 2005, in order to inform the Dutch people on the treaty and in which 448 (!) of the articles of the constitutional treaty were printed in full.[1055] The result was a completely incomprehensible product for any non-expert in European affairs and its typical jargon such as *'communautair'* and 'subsidiarity'. The complaints on the campaigning strategy of the government poured in. Advertising experts, (Euro)parliamentarians and research authorities agreed that the paper nourished ignorance and confusion among the Dutch people with regard to the constitutional treaty, did not give any insight in the pros and cons of its approval and, in fact, mainly communicated the message not to be read at all.[1056] A new disappointment followed when it turned out that civil society organisations from which the governmental campaigning team had expected support, to an important extent refused to take an active role in the campaign.[1057]

These setbacks and the negative publicity that followed from it got reflected in the opinion polls of March and April 2005, showing a decline in support for the new treaty among the Dutch people. This negative trend affected in its turn the spirits in the political camp that supported the treaty. The pressure on the government to declare itself explicitly in favour of the treaty rose.[1058] In various ultimate attempts to turn the tide, in late April and May, the members of the government brought the most heavy rhetorical canon to bear in their pleas for a yes-vote. Clearly not fully relying on the persuasiveness *vis-à-vis* the Dutch people of the 'regular' economic and internationalist political motives and arguments of succession it had come off well with when debating with parliament, the various members of the government tried to raise the stakes by arguing that rejection of the treaty implied no less than 'putting the future on the line' and asking for disaster.[1059] By rejecting the treaty, the Minister of Justice, Piet Hein Donner, claimed, the people of the Netherlands risked disintegration in Europe, comparable to what had happened in the former Yugoslavia during the 1990s.[1060] Prime Minister Balkenende walked a similar path when he, in an interview in one of the Netherlands' leading newspapers, alluded to the risk of a new Auschwitz in case the treaty would not be adopted; an allusion he repeated in a speech at a memorial service of the Second World War at the American Military Cemetery, at Margraten.[1061] Last but not least, on 10 May the then Vice Prime Minister and Minister of Economic Affairs, Laurens Jan Brinkhorst, was cited to have said that from an economic perspective, in case the constitutional treaty was rejected, 'in time the lights would go out in the Netherlands.'[1062]

These dramatic forecasts with regard to a rejection of the treaty, designed according to the theme of the Netherlands needing foreign partners for its economic and political well-being, but adding a good share of drama to it, turned out to be counterproductive in this new game of involving the Dutch people in European decision making. Soon, the Dutch media solely paid attention to the doom scenario's sketched by the government and their effectiveness with the Dutch people, who did not feel taken seriously by a government that availed itself of such rhetorical intimidation.[1063]

The negative attention for the campaign of the government and, by effect, also for the political position it advocated was grist to the mill of the political antagonists of approval of the treaty. The French rejection of the treaty on 29 May only added to their favourable tide. The consistent lines of argument of parties such as the SP and CU, traditionally critical of the integration process, in which it was emphasised that the effect of rejection of the treaty would most probably be that the European Union would enter a phase of reflection, which might ultimately lead to a new and better treaty, turned out to work wonderfully for them.[1064] Their anti 'super state' rhetoric, which made a much stronger case now that the EU had written its own constitution, helped to convince more and more people to vote against the new treaty. Former Minister of Foreign Affairs Bernard Bot would later admit that the political choice in favour of the constitutional label turned out to be crucial here:

> 'that has been a fatal mistake. […] For those against it was easy to use that word. It was the axe, the gun, the rifle , you name it, with which they went to battle: " Have a good look, you are bamboozled, constitution yes, there you go! The last piece of what is left of control, is being wasted.""[1065]

As a consequence of the inability of the Dutch government to gear up to the perception of the Dutch people of what was at stake and the success of the political critics in this respect, opinion polls kept showing a decrease in the percentage of people intending to vote in favour of the treaty.[1066]

This study has shown that the inability of the government to both understand the inner working of constitution making at the European level and the feelings and concerns of the Dutch people, the latter of which showed itself painfully during the campaign, had developed over a long period of time. From the early start of the process onwards, unifying Europe had been dealt with as a business of

foreign affairs, implying that it was left to the hands of the successive governments and their civil servants. For years and years, a political majority in parliament had kept the ranks closed and, served by the constitutional arrangements introduced in 1953, had been able to brush aside fundamental questions on harmonising the political identity of the nation-state of the Netherlands with the political identity of a unifying Europe. Even when in Dutch society, from the second half of the 1980s onwards, the call for answers to these questions became louder and public intellectual criticism on the casualness of the Dutch dealing with progressive European integration and its results increased, the political and constitutional traditions of the country kept serving as a safeguard for the political majority supporting government to move on. Traditions, that were firmly rooted in the mindset of a stable political majority regarding what was best for the Netherlands in an international setting. Traditions also, that kept essential conceptual difficulties hidden. In that way, a gap could develop between Dutch society, in which more and more critical sounds were heard and its political elite that unheedingly proceeded its own plan. A fatal combination of political miscalculation in the Convention, most importantly the underestimation of the impact of the constitutional label of the new treaty and political attention for direct democracy reaching a historic peak, brought this gap – hitherto latently present, but largely remaining without political consequences – to the surface.

On the day of the referendum, 1 June 2005, the eventual result of the vote surpassed the worst case scenario foreseen by the government, the ministries involved and advocates of the treaty in parliament.[1067] With a turnout of over 63%, more than 61% of the Dutch voters had rejected the treaty. The Hague bubble of progressive European integration as the only option available, had burst. On 2 June 2005, the Dutch government and parliament gathered to observe that there was only one conclusion possible: the Dutch nation had spoken and its political representatives would follow its verdict.[1068]

6.5 ...and Beyond

The eventual result of the revolutionary breakthrough in the Dutch political and constitutional culture struck a blow to the notion that the process of European integration would benefit from democratisation of the national decision making process. Despite initial intentions in the political domain to get a broad discussion on the future of the EU going in the Netherlands – a discussion in which politicians, civil society and citizens would be asked to participate – in everyday political and

parliamentary practice old habits turned out to be tenacious. In the aftermath of the referendum, much of the national debate focused on 'what had gone wrong' in the run-up to the referendum and who and what was to blame for the outcome. As mentioned in the introduction of this study, many explanations came up, varying from distrust in the Balkenende government to fear among the Dutch of further expansion of the Union, in particular the accession of Turkey.[1069] Nowhere, however, was the outcome directly connected to deeper historical causes. Although it was observed that the debate in the Netherlands on European integration had been characterised by 'depoliticisation', the historical roots of this trait in the Dutch political culture and the mindset of the Dutch polity continued to be given little attention.[1070] In the political domain, soul searching completely failed to occur. The social-liberal MP Boris van der Ham (D66), one of the initiators of the referendum, observed in 2007 that in the run up to the elections of the Lower House in the autumn of 2006, parties had avoided the theme of European integration. 'For fear of touching the voter on the raw', he claimed, 'most political parties avoided the subject like the plague.'[1071]

But while the Dutch political elite hoped to nurse its wounds by ignoring them, European reality moved on. In the spring of 2008, the Dutch parliament was presented the Bill of approval of the Treaty of Lisbon, signed on 13 December 2007. Stripped of its constitutional appearance – it had no constitutional reference in its name, references to the EU anthem and flag had been removed and the Charter of Fundamental Rights was no longer an integral part of the treaty – it has been established by many that this treaty, substantively, did not differ much from its predecessor. In the words of Giscard d'Estaing, the originator of the constitutional treaty: '*Dans le traité de Lisbonne, rédigé exclusivement à partir du projet de traité constitutionnel, les outils sont exactement les mêmes. Seul l'ordre a été changé dans la boîte à outils.*'[1072]

These changes of the treaty, however, were not without political relevance. In the Netherlands they offered the government – meanwhile the fourth Balkenende cabinet (CDA, PvdA and CU) had entered the stage – the possibility to return to the well-tried approval procedure of before 1 June 2005. The treaty was presented to parliament for approval by a simple majority in accordance with Article 91, subsection 1 of the Dutch Constitution.[1073] In defence of this proposal the government referred in the first place to the observation of the Council of State that the new treaty markedly distinguished itself from the constitutional treaty, thus suggesting that a special approval procedure was not necessary.[1074] Subsequently, in line with what had been argued in relation to the provisions of the constitutional treaty, the stance of the

government was that the provisions did not make changes of the Dutch constitution necessary. For that reason, the government reasoned, a special two-thirds majority was not necessary for its approval.[1075] Although this viewpoint of the government led to complaints with the parties advocating, for democratic reasons, another referendum – GroenLinks, D66, the SP and the PVV – a political majority agreed that approval could take place in accordance with the proposal of the government. On 17 June 2008, the Lower House accepted the Bill of approval with the support of the coalition parties – now that they bore the responsibility of being a governing party, even the Eurosceptics of the CU voted in favour – Groen Links, D66 and the VVD. On 8 July, approval in the Upper House followed. The ranks had been closed again. The EU could quietly march forward without the popular unrest that the referendum had caused.

As far as quietly marching forward was the objective, the years that have followed have shown an erratic course. The financial destabilisation of the international markets since 2007, bringing to light severe weaknesses in the budget policies of various Member States – primarily that of Greece – has led to new considerable shifts in competences from the Member State to the EU level. The right to control the national budget, for instance, – historically one of the strongest privileges of national parliaments – has been significantly eroded, now that the Euro-commissioner of Economic and Monetary Affairs has been yielded the competence to assess national budgets and to reprimand a Member State in case its budget deficit exceeds the EU norm of 3%. Moreover, in May 2010 the Member States agreed to commit themselves to stand surety for Member States that found themselves under great financial stress by establishing two temporary financial emergency funds (EFSF and EFSM).[1076] From 8 October 2012 onwards, the EU has had a permanent financial stability mechanism (ESM) at its disposal from which, under conditions, financial aid can be given in emergency situations without the requirement of a unanimous vote in favour of such help.[1077] It implies, that, at least in certain circumstances, Dutch money donated to the fund can be passed on without the consent of the Dutch government, let alone that of parliament. Thus, again, competences have been yielded without particularly strong safeguards in the field of national democratic control.

These developments towards an ever more fully fledged financial governance on EU level have taken place under high political pressure, resulting from the fear of economic and political collapse of the EU. Of course, these steps could and have not been taken without being presented to the national parliaments for approval, but because of the

pressure of time, there was only little time for an extensive national debate. In Germany, concerned citizens tried to gain some extra time by turning to the *Bundesverfassungsgericht* – the German Constitutional Court – for a ruling regarding the constitutionality of the ESM-Treaty.[1078] Considering the political culture in the Netherlands, in which the authority to judge the constitutionality of European treaties is reserved to parliament, such an option did not exist for concerned citizens in the Netherlands. The most clear-cut Dutch parliamentary critic of European integration, Geert Wilders, creatively attempted to delay approval and circumvent Dutch parliamentary principles by approaching the national judge in May 2012 with the request to rule that the parliamentary approval of the ESM-Treaty should be postponed until new national elections, scheduled for September 2012, would have been held. But, as was to be expected, the judge was not willing to assume competences belonging to parliament. On 24 May, a political majority in the Lower House – VVD, CDA, PvdA, D66, and Groenlinks – voted in favour of the treaty, following Article 90, subsection 1 of the Dutch Constitution of course.[1079] Approval in the Upper House followed on 3 July. These parties still succeeded in keeping the ranks closed.

The interesting question is if, and for how long they will be able to do so. Public complaints about the leaders of the European governments moving too fast without paying attention to the democratic wants and needs of the people, have been growing lately.[1080] In public intellectual circles, moreover, to an ever fiercer extent, the legitimacy of various European institutions has been questioned and the nation-state has been qualified as being the sole form for legitimate government.[1081] These utterances have been noticed in the political domain and most parties of the political mainstream have become less loud in their previous pro-integration tone in political campaigns and public statements. This change of timbre is accompanied by initiatives that display the realisation that involvement of the Dutch people and qualitative parliamentary control have been neglected far too long.[1082] Since 2005, adjustments have been made in this respect. In 2006 the Dutch parliament strengthened its 'EU staff', that assists the parliamentarians in keeping up to date in the integration process.[1083] Moreover, in 2011 MPs Gerard Schouw (D66) and Han ten Broeke (VVD) successfully recommended that prior to a European Council parliament should get the chance to discuss matters with all relevant members of the cabinet in a plenary debate; a thing that has by now become the common procedure.[1084] These are unmistakably meaningful changes in the old understanding between the government and parliament that

foreign policy matters, and EU affairs as part of that, were in the first instance reserved to the first. But, on the other hand, recent proposals to adjust the Dutch Constitution in order to close the floodgate, wilfully opened in 1953, are – for the time being – still turned down.[1085] It is hard to say goodbye to the deeply rooted internationalist constitutional tradition. Even when this can be considered an inevitability that has always been present in the objective of successful European integration: progressive federalisation requires a Member State to define itself in relation to other Member States and the federal authority. A strong(er) national constitutional order is a characteristic of that.

Conclusion

'The dogmas of the quiet past, are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must disenthrall ourselves, and then we shall save our country.'

Abraham Lincoln (1862)

When one aims to understand the rejection of the Treaty Establishing a Constitution for Europe by a 61,6% majority of the Dutch voters or the general problems currently encountered in politically unifying Europe, focusing on short term causes, such as general distrust in the (national) governments, does not suffice. Neither do explanations that take the European rather than national perspective as the starting point, or those that heavily lean on abstract theoretical notions such as, for instance, the absence of a European *demos*. They all fail to shed light on how in political *practice* the peculiarities of *national* democracy have contributed to the problems encountered in the process of unifying Europe. This study shows that at the heart of the much debated gap between the Dutch citizens and the political elite, which revealed itself on 1 June 2005 and has still not been overcome, were deep, historically rooted foreign policy convictions that reflected in national political and constitutional traditions and procedures which had formed the path towards Dutch participation in European integration.

In the first chapter attention has been given to the conviction with those dealing with foreign policy since early modern history that for the small country of Grotius by the North sea, international treaties were essential for guaranteeing its economic and political well-being. Early debates in the Netherlands on (sectorally) unifying Europe after World War II, such as the ones on the establishment of the WEU – the debate on the Van der Goes van Naters/Serrarens motion was part of this discussion – and the ECSC show that these initiatives were approached by a political majority of liberals, social- and Christian-democratic parties from this traditional foreign policy perspective. Arguments that were brought up to defend these developments show

a pragmatic viewpoint in which the focus was on the economic and political benefits for the country of the Netherlands; benefits that were considered to outbalance any disadvantage of giving up (parts of) state sovereignty and strengthening international interdependence in these policy fields. So, it can be observed that in line with foreign policy traditions, reasons of economic and political self-preservation were at the root of the decision of the Dutch political majority at the time when they decided to embark on, what would eventually turn out to be, the path towards a unified Europe with increasingly federal structures.

In these early debates, it stands out that the politicians seemed not to be aware of the conceptual difference between traditional forms of internationalisation and the character of European integration. Unlike the latter, traditional international treaties, based on the Grotius concept of bi- or multilateral treaty making between sovereign states, clearly stated what was mutually yielded and received. Withdrawing from such a treaty unilaterally was relatively easy. European integration was going to be completely different. In an incremental process, millions of legal connections between European institutions, Member States and citizens would develop of which the eventual effects were not always easy to foresee. The competence of the European institutions – the Commission and ECJ – to, under conditions, develop further the *acquis communautaire* without involvement of the national political communities, introduced unpredictabilities for the Member States that made it hard to anticipate and to assess their legal and political effects, let alone to consider them in negotiations.

This qualitative difference between 'old-school' international treaty making and unifying Europe was from the very start of the process not duly noticed and/or considered in the Netherlands. The various parliamentary debates show that, as far as it was raised as a theme for discussion, a majority disposed of the conceptual details of the process as irrelevant or reasoned them away. Approached as a form of internationalisation, positive effects for the Netherlands were counted on and that was the main concern of the political majority, consisting of social-democrats, liberals and mainstream Catholic and protestant parties.

From this point of departure, internationalisation thinking reached and early peak in the decision of the political elite on constitutional revision in 1953. Anticipating the development towards a unified Europe in general and a European Defence Community in particular, an overwhelming parliamentary majority did not see any harm in adapting the national constitution in such a way that these plans would not be stopped by constitutional objections. On the

contrary, implementing them was considered necessary. Pragmatic considerations ruled in the arguments of those endorsing the recording of provisions that made it constitutionally possible to: 1) deviate from the Dutch constitution in an international agreement; 2) approve of such agreements with a two-thirds majority in one reading only, with no elections in between – a lighter procedure than a formal process of constitutional revision required; and 3) approve, if deemed necessary, international agreements *not* deviating from the national constitution by tacit consent.

These changes were far-reaching in the sense that they amounted to a 'gap' in the Dutch constitution through which state sovereignty could be conferred on an international or European level of governance, without the need of involving the Dutch people, even when such a conferral implied a break with national constitutional provisions. Moreover, the changes weakened parliamentary control on the constitutional coherence of the Dutch state. It is telling for the pragmatic mindset with which the parliamentary majority approached the issue of potentially losing grip on the constitutional contours of the Netherlands in exchange for greater latitude for the government in concluding international agreements, that it embraced the constitutional changes as desirable and necessary in the light of the political and economic interests of the country.

By means of the constitutional revision of 1953 then, the Dutch political community affirmed itself as fundamentally open towards agreements and legislation that were expected to come about in the international order. In the years following the revision, a political majority worked for European unity from this identity. This notion of constitutional openness *vis-à-vis* the international legal order was an important factor in the national approval procedures concerning the EDC, EEC and Euratom treaties. The articles introduced in 1953, in combination with a broadly shared political preference for participating in international initiatives, guaranteed a smooth and quick approval process, without lengthy quarrels on complex questions on the compatibility of the agreements with the constitutional order of the nation-state. It was contentedly observed in broad circles in parliament that the constitutional anticipation of 1953 served its purpose in this regard. The fact that the new constitutional arrangements also concealed the immense conceptual complexity of the journey of federalising Europe, which the Netherlands was about to embark on, was not understood but rather embraced as a political convenience. Political opponents of the notion of European unification who attempted to raise attention for such conceptual difficulties had no

chance of being listened to, even when – in relation to the EEC, for instance – their concerns were shared by the highest legal advisory board in the Netherlands, the Council of State.

During the entire course of the process of European unification the broadly shared understanding in parliament that the Netherlands should participate in the various European communities, kept resting on the foreign policy conviction that the Netherlands needed international partnerships for its economic and political well-being. This conviction, in its turn, stemmed from deeply rooted ideas concerning the character of the Netherlands and its role in the world. Such ideas and notions functioned – whether explicit or not – as rhetorical *topoi* in political discussions on progressive European integration. The most important *topos* was that the Netherlands is small and its economic and political well-being can only be safeguarded through international partnerships.

In the parliamentary debates this comes out clearly in the rhetorical emphasis of successive governments and parliamentary majorities on the absolute necessity of Dutch approval of the respective treaties. The second chapter shows that from 1953 onwards a second line of argument grew stronger in which apart from necessity, policy consistency became the focal point. Since, in anticipation of initiatives for European integration, parliament had expressed its support for the bringing about of 'a real legal community of democratic states in a federal structure',[1086] and had moreover adopted a constitutional revision aimed at the smooth intertwining of the national constitutional order and such a federal structure, it was argued that approval of the EDC, EEC and Euratom was no more than fleshing out a commitment already taken on. The rationale that 'in for a penny', should logically lead to 'in for a pound' was broadly shared as the argumentative basis for approving the various treaties. The proponents of progressive integration effectively incorporated an argument of succession – next to the argument of necessity – in their rhetorical toolbox, from which it could be grabbed at any convenient time.

And so they did, as is shown by the parliamentary debates on European integration following the approval of the Treaties of Rome. In fact, the arguments of necessity and consistency – the two main considerations on which the majority consensus to join in the process of European integration of the 1950s was built – largely remained the alpha and omega of the political pleas for progressive integration in the decennia thereafter. The debates of the 1960s and 1970s, in which the whims of de Gaulle and new possibilities for supranationalisation after his resignation were central themes, lend colour to the

observation that the political majority for reasons of the country's preservation believed European integration and, more specific now, supranationalisation, to be essential. The debates on the merger of the European executive organs, the UK accession to the EEC and a directly elected EP consistently reconfirm that many in parliament considered the Netherlands to be a tiny player in the international political order, deeply depending on free trade and politically risking to be overrun by the bigger powers surrounding it.

The various efforts to bring about a supranational organisation of the EEC, including the United Kingdom, were consistently aimed at strengthening the strategic position of the Netherlands in terms of economic and political power. As is shown in chapter three, a central belief that led the political mainstream to vote in favour of steps intended to make the EEC more supranational, was that the strengthening of the European Parliament and Commission, by conferring national sovereignty and competences on these institutions, would pay out in terms of influence of the Netherlands on the European stage. It was argued that the small country of the Netherlands would be able to take advantage of the transference of Member State-sovereignty to a supranational level of governance because in that way Dutch power would relatively rise whereas the influence of the strongest powers (France, Germany, and later also the UK), would relatively lessen. 'The community structure', it was argued in other words, '[makes] it possible […] that no decisions about us are made without us, but that we can have influence on the course of events in Europe from within.'[1087] The joining of England was considered to bring the desired Atlantic counterweight against the all too continentally focused French. A new kind of balance of power, of which the Netherlands would reap profit, was the aim.

How this aim related to the process of European integration, or – to put it sharper – whether this process was in all respects the right instrument to reach this objective, was never fundamentally debated. The political mainstream, structurally consisting of liberals, social- and Christian-democrats, did not question the central presupposition with which it approached the process of European integration. The argument of succession-line of reasoning in which all consequential steps were explained as the mere fulfilment of earlier promises – in the case of Greek accession even called a 'historic imperative'– only contributed to the self-evident striving along on the path of European integration and the subduing of any fundamental question that might undermine the political consensus of moving forward.

The various debates in the 1960s, 1970s and early 1980s show that, when the political mainstream was faced with (conceptual) difficulties and/or was confronted with effects of European integration that were hard to reconcile with its central presupposition, the answer was sought rather in rhetorical creativity than in a fundamental investigation or reorientation on the conceptual starting points. Imperfections were pragmatically disposed of as temporary problems to be solved in the course of further integration. And fundamental questions regarding political identity – what, on the level of national and political culture and identity, bound the Dutch to the Greeks or divided them from the Spaniards? – were by-passed with far-fetched narratives on inter-cultural relations and festivities instead of being seized as opportunities for an in-depth debate on the theoretical and practical implications of the process of European integration that the Netherlands was ever deeper getting into.

Time and again, the political mainstream, in its determination of keeping approval of new steps in the European integration process short and simple, knew itself backed by the constitutional arrangements introduced in 1953. Firstly, the provisions guaranteed that, in political practice, all European agreements were to be approved by a simple parliamentary majority. But secondly, and more importantly, considering the fact that in parliamentary voting rounds, a well-over two-thirds majority structurally voted in favour of the respective treaties, they served in keeping the political ranks closed. In the parliamentary practice of post-1953, the essential question, whether the process of European integration was compatible with the Dutch constitutional order, could easily be waved aside as irrelevant. The political significance of Article 63, its post-1983 successor Article 91, subsection 3 and the stretching of its meaning with the Brinkhorst c.s. motion (1980) was, that – in political practice – it made in-depth verification of and discussion on whether new European treaties were compatible with the Dutch constitution largely irrelevant or superfluous. Thus, the constitutional arrangement contributed, apart from being conducive to a smooth approval of new steps in the process, to a lack of understanding, in and outside parliament, of how European integration actually related to and touched upon the Dutch constitutional order.

The line of argument of the political mainstream, consistently built on considerations of necessity, policy consistency and the self-created constitutional logic of openness *vis-à-vis* treaty law, implied that, with the approval of one step in the process of European integration, a base was established for the following. In other words,

through the argument of succession a reality was constructed in which it became ever harder for government and parliament to get a hold on progressive European integration; on the basis of previous steps in the process, new steps were depicted as logical and necessary. Once made, new steps were turned into *faits accomplis* on which, according to the parliamentary majority, could and should be built further.

From this argumentative structure, a self-propelling dynamics developed in which striding along on the path of European integration was perceived and presented as the sole way to go. These dynamics were complementary to the self-propelling rhetorical and political tactics employed at the European level of decision making: by means of the recording of the pursuit of 'an ever closer union' in the Rome Treaties of 1957, this became the central objective of European integration for the decades to follow. Both worked together in contributing to the development of a political reality and consensus from which new steps in the integration process could follow as a matter of course. They helped to construct a political tradition in which the pro-European character of the Netherlands became a *topos* in itself.

It is important to call to mind, however, that the pro-European majority consensus was never uncontested. From the very start of the integration process, the Protestant-conservatives together with the Dutch Communists – *bien étonnés de se trouver ensemble*! – and one or two dissidents of the parties in favour of European integration, held contrary ideas on the use and necessity of the integration process for the Netherlands. In particular the first group turned explicitly and for reasons of principle against the idea that the process of European integration was to be approached as a means to pursue the interests of the Kingdom of the Netherlands. The new element of conferral of sovereignty on a supranational level of decision making signified in their eyes a crucial difference with traditional internationalism based on agreements between sovereign states. The institutionalisation of a European army or, more abstractly, the proclamation of an ever closer European union was in their view hardly reconcilable with the essential characteristics of the Dutch nation-state. Whereas a political majority was focused on what could be gained for the Netherlands outside the national borders – economic prosperity and self-preservation – these political opponents of the concept of European integration called for attention of what could be lost. Yielding sovereignty, they warned, implied the yielding of control on the political course and fate of the state. Moreover, they emphasised that Dutch citizens felt emotionally connected to their country, their government and their constitution; a feeling in danger of being eroded, they feared, in case too much power

was conferred on the European institutions. And, so they wondered, would it ever be possible to bring about such a connectedness on the European level?

The Protestant-conservatives, to put it differently, did not share the mindset of the political majority in which yielding sovereignty was seen as an instrument in order to come to economic and political well-being, guaranteed by international partnerships. They regarded national sovereignty also as a goal in itself and, therefore, the successive initiatives aimed at deepening the European interdependence (EDC, EEC, SEA and what followed) were not supported by them and neither was the constitutional revision of 1953 that made parliamentary approval of new steps simpler. The Protestant-conservatives were supported in their rejections by the Dutch Communists, who, albeit for another reason – in their view European integration was first and foremost a capitalist plot – also structurally voted against steps aimed at deepening the European ties. This political support, however, did not alter the fact that these political critics were too few in number to call a halt to the Netherlands continuing on the European path. Building on historic experience, the parliamentary majority regarded the notion of state-sovereignty as a barrier rather than as a condition for keeping the Netherlands well and safe and, for that reason, turned a deaf ear to the calls and warnings of those in parliament sceptical about European integration. Thus, progress in the process was maintained and a parliamentary majority consensus about it guarded.

But it came at a price. By approaching and procedurally dealing with European integration as just another way of reaching international partnerships, beneficial to the Netherlands, the political mainstream failed to early observe and to fully conceptually consider and question the unique and distinguishing traits of the process. The refusal of the political mainstream to consider and debate the concerns of the Eurosceptics, i.e. the possible downsides for the Netherlands and Dutch democracy of the yielding of sovereignty to a European level of decision making, resulted in a lack of vision on this point. A blind spot even, which would only slowly reveal itself in the course of the 1980s and 90's when the immense complexity of the integration process – its true nature – became ever clearer.

With the expansion of the EEC, the composition of the Communities became more heterogeneous; a development that was logically reflected in an increase of conflicts of interests between the various members and/or the Community as a whole. A clear example, which generally disappointed the Netherlands since it had zealously devoted itself to the accession of the UK, was the obstinate

attitude of Margaret Thatcher regarding the issue of national financial contributions to the community. It exposed how national interests of powerful states could still hold hostage the political opportunities of the European collective. All this went counter to the hopes and expectations of the Dutch political mainstream that the Netherlands would become in essence more sovereign within the constellation of the European Communities because, in it, the collective interest – which was conveniently believed to coincide with the Dutch interests – would prevail.

Moreover, with the SEA taking effect, the *acquis communautaire* had definitely become more than a trade agreement. The proclamation of the objective of a European Union and the anticipation of a historic constitutional moment by linking this objective to democratic legitimisation by the national citizens, illustrate the great political relevance of the agreement. The European integration process was – on the level of its design and claims – getting closer to what its passionate advocates in the early 1950s had hoped it would bring about: a European federal order. On the level of political theory, as can be observed from the developments in the intellectual debate on European integration in the Netherlands and abroad, this led to fundamental questions coming up for discussion: questions regarding the reconcilability of various national political and cultural identities, the presence or absence of a substantive basis to democratically legitimise the project (i.e. the (no-) demos issue and the question of how to involve effectively the national citizens) and the subject of the economic, political and cultural costs of the process. In this way, progress of European integration brought to light the essential conceptual difficulties underlying the operation. It turned out to be much more than a straightforward foreign policy matter and there was an urgent need for answers.

Meanwhile, however, the process went on. Substantively, the 1980s and 1990s show the development of an ever more mature and denser European legal and policy framework, touching on ever more, what had until then been, national competences. In these years, the Netherlands was increasingly confronted with the disciplining power of the European institutions, in particular the ECJ. It confronted the Dutch political community with consequences of yielding competences to a supranational level of governance that could not be univocally explained as serving the national interests. The costs of yielding sovereignty, to put it differently, became visible; a development that only contributed to the call in Dutch society at large to rethink the European dreams of the Netherlands and to define its goals more sharply.

With the costs and downsides of European integration starting to become visible, the political mainstream was confronted with the fundamental identity problem that had lay hidden behind the paradoxical conviction that the Netherlands needed to merge into a unified Europe in order to survive. Ever since the late 1940s, the political mainstream had framed its story in favour of progressive European integration on the assumption that whatever served European integration, served the state of the Netherlands. Within this picture, presenting the process of European unification as an essential part of the instrumental Dutch foreign policy strategy had been easy to defend, just like the substantial autonomy – an old foreign policy tradition – and the absence of strong constitutional checks with which successive governments could work towards new steps in the process.

But with Europe growing as a political entity and the dawning of a general awareness in the course of the 1980s that progressive European integration would come with serious implications for the national political system, the crucial weakness in the old narrative in favour of European integration became clear. How much of the win-win storyline could be upheld in a time that the losses came in view? In the wake of this question, another, even harder matter came up: if the old argumentative line of international instrumentalism had lost the most essential parts of its meaning, what narrative could fill the gap? The Dutch parliamentary debates on European integration between 1986 and 1997 show the struggle of the political majority in favour of European integration in upholding their fiery pleas for progression while worrying and complaining ever more on what this would eventually imply. The consequence was a schizophrenic pattern of arguments and actions.

So, although the debates from the second half of the 1980s onwards show that the political mainstream in the Netherlands started to realise the consequences of what it had endorsed in the past four decades and how this made answers to fundamental questions regarding legitimacy and national political identity urgent, it stands out that this had hardly any direct consequences in parliamentary practice. Admittedly, the parliamentary debates in the early '90s on the Schengen II agreement and the Maastricht and Amsterdam treaties, reveal a growing determination in parliament to enhance democratic control on the process. This showed itself, for instance, in the amendment-Van Traa/de Hoop Scheffer to the bill of approval concerning Schengen II, which asked for drafts of decisions of the Executive Committee to be made public, making possible more political involvement of parliament in them. Fundamentally, however, little changed. In these debates as

well, at the end of the day the parliamentary majority of PvdA, CDA, VVD and D66, which had consistently devoted itself to the bringing about of a supranational European order, decided in favour of new steps in the integration process on the same grounds as ever. The conviction that the Netherlands needed the process of European integration for economic and political reasons and should, for that reason, position itself as a willing and reliable partner, remained decisive. In line with how the land of Grotius had handled the process from the very start, uncertainties and fundamental questions regarding political identity or democratic control were once again reasoned away, taken for granted and/or considered to be solved in the course of the process.

Thus, the late 1980s and the early 1990s form a period in which two contradictory developments can be observed. Whereas the process of European integration underwent a crucial evolution and – in accordance with that evolution – the questioning and conceptualisation of the process in both intellectual and political circles grew, the decision making of the Dutch political mainstream, when all was said and done, remained rooted in old convictions and presuppositions in which European integration was seen and dealt with as just another form of beneficial political internationalism. It illustrates the tenacity of the pro-European mindset in which, for years, European integration had been rather *un*contested and sacrosanct. Although they were aware of a changing political reality, the pro-European political majority could not part with its trust in finding Dutch salvation beyond the borders of the state; a trust that made it hard to thoroughly consider – let alone: to act upon – questions regarding the use and necessity of national sovereignty, state borders, national political identity and on how to preserve their beneficial properties. It had developed a blind spot for that and for the fact that sooner or later these matters would become the crucial and inescapable questions on which progress on the path of (federal) European integration would depend.

Within the atmosphere of growing doubts and frantically trying to keeping the ranks closed, the successive governments of the 1980s and 1990s only contributed to the schizophrenic situation by structurally playing down the importance of every new step in the integration, in a time when the rhetoric of moving to *finalité* was clearly started. Ambivalent political communication on the SEA, Maastricht and Amsterdam was the consequence. These agreements concerning crucial steps in the integration process, were structurally procedurally presented as little more than business as usual. As soon as difficult questions and possible objections were raised in the debate, however, the government stressed the urgency of a quick approval

and the potential damage of delay, especially for the reputation of the Netherlands abroad. And, of course, with the lapse of time, it became clear to advocates and antagonists of European integration alike, that indeed crucial steps *had* been taken by signing up to these new steps. The tension that the ambivalence of the government and political mainstream called into existence, formed fertile ground for various politicians. Bolkestein in 1992 and Fortuyn and Wilders after the turn of the millennium, started to focus on 'the people' and the democratic deficit in their attempts to interpret the discrepancy between what the Netherlands needed and the process of European integration had to offer.

Thus, a split could develop within the identity of the Dutch polity that, by 1997, had grown complete: on the European stage the Netherlands still participated as one of the best pupils in class, whereas within the national political domain the whole process became ever more contested. By consequence, diverging discourses emerged, varying from a narrative expressed on the international political stage, in which the Netherlands and European integration were presented as belonging together as a matter of course, to a narrative in the national domain, focusing more and more on how European integration was increasingly in the way of what was considered of importance in the Netherlands. These observations contribute to understanding how the vision on European integration of the Dutch people on the one hand, and the decision making of government and parliament in this field on the other, had started to diverge; a development of which the consequences, as it turned out, would become manifest on 1 June 2005.

In chapter six it is shown that in Dutch society, in the process of the growing dissension on the subject, the constitutional label, put by Giscard D'Estaing on the product of the European Convention, was crucial. For many in and outside parliament, this label confirmed that something hugely important was about to happen that was hard to legitimise on the basis of only the scanty constitutional procedures agreed on in 1953. Now that a true 'European Constitution' was about to be adopted, many found that the Dutch people – until then consistently kept out of decisions on treaties regarding European integration – should be heard.

The fact that the far-reaching effects of the constitutional label, such as the call for a popular referendum, took the second Balkenende government by surprise, is again illustrative of the extent to which the administrative elite counted on the approval procedures of 1953: keeping them short and simple by ruling out fundamental conceptual discussions and requiring small majorities. The clumsy campaign

of the cabinet in favour of a positive vote in the referendum can be explained as to show the historically grown inability of the Dutch government to debate in a clear, understandable and balanced way, the concept of European integration with a larger and more diverse public than a political elite that shared its internationalist mindset. In this perspective, both the Dutch call for a referendum in 2005 and its outcome are to be understood as consequences of a path chosen in 1953 that was not critically reviewed ever after.

With regard to the approval of the Lisbon Treaty, and more recently the ESM, a return to the old, and well tried constitutional procedures of 1953 can be observed. When writing this, (March 2013), the European debt crisis that holds the EU Member States in its grip has the potentiality to become another propelling factor in bringing about a full-dress European federation closer. Simultaneously, the grave economic problems in the hardest struck Member States and the aid that is needed from those in the community still doing relatively well, form an unprecedented test of the mutual solidarity that has always been held to be a pillar of the integration process. In the Netherlands, popular support for, and trust in the benefits of progressive European integration are under pressure,[1088] whereas a political majority feels forced to further build stronger European governing structures in order not to run aground economically. From this perspective, the post-SEA history of increasing criticism developing with a political majority carrying on as usual, seems to repeat itself.

In order to reduce the risk of the ambitions of a political majority backfiring into another blow to the trust in both the capability of the Dutch administration and the feasibility of the process of European integration as a whole, it is high time that this majority starts to fundamentally reflect on its deepest convictions and beliefs with regard to progressive European integration, their realism, and how these relate to the dogmatic principle of constitutional openness. The case is new, so we must think anew and act anew. Lets disenthrall ourselves. Then we might be able to save the EU, and the Netherlands with it. This study hopes to be a contribution to that.

Acknowledgements

When I started my search for a first job in the autumn of 2007, the idea of writing a PhD thesis had never occurred to me as a serious option. Considering my self-proclaimed preference for working in a 'dynamic, applied science surrounding', the prospect of four (or five, as it would turn out) long years of solitary study appeared to me as embarking on a journey for which I was not cut out.

But, I took it nevertheless. Looking back on the path that I eventually chose, I must admit that there were times indeed when it felt as a never-ending uphill struggle, comparable perhaps to how many have characterised the European integration process itself: an Echternach procession. At the same time, writing this thesis was among the most rewarding experiences of my life so far. For the fact that I managed to reach the finish line – in sanity (more or less) – I am greatly indebted to those who supported me along the way.

First of all, I want to thank Antoon de Baets, who awakened my interest in contemporary political history, inspired me to broaden my view of the legal aspects of political processes and who was the first to point out to me the possibility and chances of applying for this particular PhD project. If it was not for him, I would probably have never applied at all.

I am very grateful to Rik Peters, Peter van den Berg and Laurence Gormley. Firstly, I thank them for designing the contours of the *Contested Constitutions* project. Throughout the past five years I have been proud to work in a research group that truly did justice to the term 'multidisciplinary' by naturally bringing together insights from history and law, and political and rhetorical theory and practice. Secondly, I greatly appreciate how these three men guided me through the process. I thank Laurence in particular for welcoming me in the European Law department and for his supportive attitude whenever I came to him with a special request (his permission in 2009 to move to The Hague, for instance). Dear Rik and Peter: special thanks to you for all those hours we spent in Peter's far too hot office, discussing my findings in the sources. I very much enjoyed these meetings, in which the

two of you challenged me to awaken my 'authorial voice'. Your sharp questioning was essential in getting the story out of me.

My working days in Groningen were coloured by the kind and supportive colleagues of the European Law department and the Law Faculty in general. I keep happy memories in particular of sharing an office with Anatole Boute and Jeanne Mifsud Bonnici and of the new friends that I made through the various PhD Council and GGSL activities. Most of my coffee and lunch breaks I spent with Jelte Olthof, my companion on this PhD track, who became a close friend along the way. Jelte, your bright view on what the *Contested Constitutions* project was all about and your willingness to share your thoughts with me, helped me to get beyond my insecurities of the first year. Later on, your sharp comments were crucial in bringing my research products further and your friendship was important whenever I doubted if and how I would be able to reach the end. I am looking forward to having you next to me at my defence. After my move to The Hague, my regular lunches with Karin van Leeuwen enlivened my days. Karin, thank you for all the times that you helped me out with a book title, contact details for this or that person and, of course, for introducing me to the 'European law historians' network that you came in contact with through Morten. I am very much looking forward to reading the future work of this Danish-Dutch working group on the history of European law.

Naturally, I wish to thank all those whom I interviewed and corresponded with for they were willing to share their experiences with me and allowed me to cite from our conversations, letters and e-mails. The prospect of these contacts was crucial in my eventual decision to apply for the PhD position, for they were my guarantee that I would not become a backroom academic only but also that my research would yield me insights in what had actually happened in the domain of policy and politics. Eventually, the inspiring stories of those involved in actively building Europe were a crucial factor in my decision to leave academia for a job in the domain of politics in February 2012.

Coming to that, my gratitude goes also out to my 'new' colleagues at D66 in general, and the *Van Mierlo Stichting* in particular. Frank van Mil, thank you very much for taking the risk of employing me in spite of the fact that my thesis was not finished yet and a slow start of my work for the foundation was therefore clear from the beginning. Thank you also for the trust you put in me by giving me the role of secretary in the *Programmacommissie* 2012. I have enjoyed this rollercoaster ride that you put me on to the fullest and through it – and Marty and his methods – I learned the lesson that I needed in this last year of thesis writing: sometimes things just need to be finished. Corina Hendriks

and Maartje Jansen: thank you for the laughter and support in the past stressful year.

Then, to conclude, a special word of thanks to my close friends and family. The girls I met during my history study in Groningen, in high-school and even before – you know whom I mean: thanks for cheering and celebrating with me every single personal and professional milestone in the past years and for getting me past disappointments with a beer, your humour or warm words. In the course of this year, I hope to make up for all those times in 2012 when I missed a party or date in order to finish another section or chapter.

Special thanks also to my sisters and their families and my family-in-law, who, with their interest in what I was working on, on the one hand, while simultaneously having the talent to tone down the importance of it all, helped me to put things in perspective at times that I tended to get lost in the work.

Dear Piter, as I told you many times before, you lighten all my days. Your cheer and optimism were essential in keeping a focus on the light at the end of the tunnel. I am so happy to have back the evenings and weekends to spend with you!

Dear *heit* and *mem,* as a way of thanking you, I dedicate this work to you. Your interest, support and involvement in my study and work were unequalled.

The Hague,
March 2013
Jieskje Hollander

Abbreviations of Dutch political parties explained

ARP: Anti-Revolutionaire Partij (Anti-Revolutionary Party)
CD: Centrum Democraten (Centre Democrats)
CDA: Christen-Democratisch Appèl (Christian Democratic Appeal)
CHU: Christelijk Historische Unie (Christian Historical Union)
CPN: Communistische Partij Nederland (Communist Party of the Netherlands)
CU: Christen Unie (ChristianUnion)
D66: Democraten '66 (Democrats '66)
DS'70: Democratisch-Socialisten '70 (Democratic Socialists '70)
GPV: Gereformeerd Politiek Verbond (Reformed Political League)
GL: GroenLinks (GreenLeft)
KNP: Katholiek Nationale Partij (Catholic National Party)
KVP: Katholieke Volkspartij (Catholic Peoples Party)
LN: Leefbaar Nederland (Livable Netherlands)
LPF: Lijst Pim Fortuyn (Fortuyn List)
PPR: Politieke Partij Radicalen (Radical Political Party)
PSP: Pacifistische Socialistische Partij (Pacifist Socialist Party)
PvdA: Partij van de Arbeid (Labour Party)
PVV: Partij voor de Vrijheid (Party for Freedom)
RPF: Reformatorische Politieke Federatie (Reformatory Political Federation)
SGP: Staatkundig Gereformeerde Partij (Reformed Political Party)
SP: Socialistische Partij (Socialist Party)
VVD: Volkspartij voor Vrijheid en Democratie (People's Party for Freedom and Democracy)

Successive Dutch cabinets (1948-now)

Drees/Van Schaik (PvdA, KVP, VVD, CHU, 1948-1951)
Drees II (PvdA, KVP, CHU, VVD, 1951-1952)
Drees III (PvdA, KVP, CHU, ARP, 1952-1956)
Drees IV (PvdA, KVP, CHU, ARP, 1956-1958)
Beel II (KVP, ARP, CHU, 1958-1959)
De Quay (KVP, VVD, ARP, CHU, 1959-1963)
Marijnen (KVP, VVD, ARP, CHU, 1963-1965)
Cals (KVP, PvdA, ARP, 1965-1966)
Zijlstra (KVP, ARP, 1966-1967)
De Jong (KVP, VVD, ARP, CHU, 1967-1971)
Biesheuvel I (KVP, VVD, ARP, CHU, DS'70, 1971-1972)
Biesheuvel II (KVP, VVD, ARP, CHU, 1972-1973)
Den Uyl (PvdA, KVP, ARP, PPR, D66, 1973-1977)
Van Agt I (CDA, VVD, 1977-1981)
Van Agt II (CDA, PvdA, D66, 1981-1982)
Van Agt III (CDA, D66, 1982-1982)
Lubbers I (CDA, VVD, 1982-1986)
Lubbers II (CDA, VVD, 1986-1989)
Lubbers III (CDA, PvdA, 1989-1994)
Kok I (PvdA, VVD, D66, 1994-1998)
Kok II (PvdA, VVD, D66, 1998-2002)
Balkenende I (CDA, LPF, VVD, 2002-2003)
Balkenende II (CDA, VVD, D66, 2003-2006)
Balkenende III (CDA, VVD, 2006-2007)
Balkenende IV (CDA, PvdA, ChristenUnie, 2007-2010)
Rutte I (VVD, CDA, 2010-2012)
Rutte II (VVD, PvdA, 2012-now)

Interviewees

Ate Oostra, from 1970-2001 Ate Oostra worked as a diplomat for the Dutch Ministry of Foreign Affairs (in East-West affairs, as Deputy Permanent Representative to the EU and Ambassador to China). From 2001-2008 he was Director-General International Affairs of the Ministry of Agriculture.

Bart van Poelgeest, works for the Ministry of General Affairs. He was interviewed in his capacity as a former staff member of the Unit of Constitutional Affairs of the Dutch Ministry of the Interior (1987-2001). In 2000, he was, through a detachment with the Directorate Integration of Europe at the Ministry of Foreign Affairs, as a taskforce member involved in the Intergovernmental Conference that would lead to the Nice Treaty.

Bernard Bot, held diverse diplomatic posts, lastly as an ambassador to Turkey, and became Secretary General of the Ministry of Foreign Affairs in 1989. Bot was Permanent Representative of the Netherlands to the EU (1992-2003) and Minister of Foreign Affairs in the second and third Balkenende administrations (2003-2007).

Chris Baljé, former Secretary General (1993-2003) of the Dutch Upper House and very sympathetic to the cause of European integration. For that reason he dedicated himself to strengthen the parliamentary instruments for control by the Dutch parliament with regard to European decision making.

Edmund Wellenstein, started his European career as a civil servant at the Dutch ministry of Foreign Affairs (1950-1953) and later on held the position of, *inter alia*, Secretary-General of the High Authority of the European Coal and Steel Community (1960-1967), Director-General of Foreign Trade at the EEC (1967-1970), Head of the Commission's task force for the negotiations on the first enlargement of the Community (1970-1972) and Director-general of Foreign Affairs (1973-1976) with the European Commission.

Erik Jurgens, Emeritus Professor of Constitutional Law who also held various position within the political domain. Co-founder of the PPR and MP for this party between 1972-1975 and, later on, MP (1990-1994) and senator (1995-2007) for the PvdA.

Frans Andriessen, started his national political career as an MP for the KVP (1967-1977), and – in the course of his career – held the office of Minister of Finance (1977-1980) and, successively Eurocommissioner of Competition, Agriculture and External Affairs and Business (1981-1993).

Herman Posthumus Meyjes, former civil servant at, successively, the Ministries of Agriculture and Foreign Affairs. Later on in his (diplomatic) career he became, *inter alia,* Director-General of European Cooperation at the Foreign Ministry (1978-1986).

Hester Menninga, supported the Dutch delegation to the European

Convention initially as a civil servant for the Dutch Ministry of Foreign Affairs and, subsequently, as a staff member of the 'Europe office' of the Dutch Upper House.

Ian de Jong, Deputy Permanent Representative of the Netherlands to the European Union in Brussels, under Dr. Bernard Bot (1998-2002). After his ambassadorship to the United Nations and other organisations (among others, the World Trade Organisation) at Geneva (2002-2006), Ian de Jong held the post of Director-General for European Cooperation at the Dutch Foreign Ministry from 2006-2010.

Ivo van der Steen, Head of Centre of Expertise on European Law at Dutch Ministry of Foreign Affairs since 1998. In that capacity Van der Steen was involved in the coming about of various European treaties (Amsterdam, Nice, Constitutional Treaty, Lisbon) and their national approval procedures.

Jaap de Zwaan, Between 1979 and 1998, Jaap de Zwaan worked as a civil servant in the Dutch Ministry of Foreign Affairs. As Legal Advisor of the Permanent Representation (1983-1988 and 1995-1998) he was involved in the negotiations on and the drafting of several European treaties, such as the Treaties of Accession of Spain and Portugal to the European Communities, the European Single Act and the Treaty of Amsterdam. Currently De Zwaan is part-time professor in European Law at the Erasmus University in Rotterdam and lector European integration at The Hague university of applied sciences.

Jos Kapteyn, civil servant with the Ministry of Foreign Affairs (1960-1963). After that he successively held the positions of Professor of the Law of International Organisations (1963-1976); Member of the Dutch Council of State (1976-1990) and Judge with the ECJ (1990-2000).

Laurens Jan Brinkhorst, Laurens Jan Brinkhorst has been Minister of Economic Affairs, Minister of Agriculture, Deputy Minister of European Affairs and was also a member of the Dutch and European Parliaments. With the European Union he served as EU-Ambassador to Japan and was subsequently DG for Environmental and Nuclear Safety. In academia he has held chairs at Groningen, Leiden and Tilburg Universities (The Netherlands), as well as in Lausanne (Switzerland).

Maryem van den Heuvel, Dutch diplomat previously seconded to the European Commission to the Council Secretariat of the EU and subsequently appointed as member of the Secretariat of the European Convention. She is currently Director of the Western Hemisphere Department at the Ministry of Foreign Affairs at the Hague.

Paul Arlman, former Deputy Director for International Affairs at the Dutch Ministry of Finance; most closely involved in the process of European integration between 1978-1986.

Ron Niessen, Head of the Unit of Constitutional Affairs of the Dutch Ministry of the Interior between 1986 and 1999. Honorary Professor at the University of Amsterdam (2000-2010).

Ronald van Beuge, former Dutch diplomat. Director-General of European Cooperation at the Foreign Ministry between 1990-1995. In that capacity he was closely involved in the process running op to the Maastricht Treaty.

Sjoerd Gosses, had a long career in the field of European integration with the Dutch Ministry of Foreign

Affairs. He was Director-General for European Cooperation at the Foreign Ministry between 1995 and 1999 and, successively, held the post of Dutch ambassador in Turkey between 1999 and 2005. In that capacity he was involved in negotiations on accession between Turkey and the European Union.

Tom de Bruijn, since 1 June 2011State Councillor. Between 2003 and 2011 he held the post of Permanent Representative of the Netherlands to the EU. Deputy representative of the Dutch government during the European Convention (2002-2003).

Willem Pedroli, Since 1997 Willem Pedroli has been working with the Directorate Constitutional Affairs and Legislation of the Dutch Ministry of the Interior and in this capacity was involved in approval processes of various European treaties as far as it concerned their constitutionality. After working for the European Commission as national expert for a few years, he has been head of the unit for Constitutional Affairs of the aforementioned department since 2008.

Wim van Eekelen, started his political career as an MP for the VVD, afterwards he successively became State Secretary of Defence (1978-1981), State Secretary of European Affairs (1982-1986), Minister of Defence (1986-1988), Secretary-General of the WEU (1989-1994), and senator (1995-2003). In the latter capacity he took part in the European Convention on behalf of the Netherlands.

Correspondences

Henc van Maarseveen (†), civil servant at the Ministry of the Interior between 1957-1968, from 1963 onwards at the department of Constitutional Affairs. Afterwards he became a professor of constitutional law at the *Nederlandse Economische Hogeschool* in Rotterdam (1968-1992).

Marten Burkens, civil servant at department of Constitutional Affairs at the Dutch Ministry of the Interior (1964-1969). Afterwards, Professor of Constitutional Affairs (1971-1995) and senator (VVD).

Kees Borman, lawyer and civil servant at the Ministry of the Interior (1969-1983), in service of the department of Constitutional Affairs.

References

Articles

Baudet, H., 'Nederland en de rang van Denemarken' *BMGN* XC 3 (1975), 430-443.

Barkhuysen, T.M.L. van Emmerik and J.P. Loof, '50 jaar EVRM en het Nederlandse staats- en bestuursrecht – ontwikkelingen en vooruitzichten' in: R. Lawson and E. Myjer (eds.), *50 jaar EVRM. Rechten van de mens* 1950-2000 (Leiden: Stichting NCJM-boekerij, 2000) 327-408.

Baxi, U., 'Constitutionalism as a Site of State Formative Practices', *Cardozo Law Review* 21 (2000) 1183-1220.

Berg, P.A.J. van den, 'Constitutive rhetoric: the case of the 'European civil code' in: M. Milo, J.H.A. Lokin, C.H. van Rhee and J. Smits (eds.), *Civil Traditions, Codifications and Unification* (Maastricht 2013) (forthcoming).

'De Nederlandse Grondwet: hoofdgerecht of bijgerecht?' in: *Ars Aequi* 60 3 (maart 2011) 168-170.

'The integrative function of constitutions: a historical perspective' in: Fabian Amtenbrink and Peter A.J. van den Berg (eds.), *The constitutional integrity of the European Union* (The Hague, TMC Asser Press, 2010) 13-53.

Besselink, L., 'Internationaal recht en nationaal recht' in: Nathalie Horbach, René Lefeber, Olivier Ribbelink (eds.), *Handboek internationaal recht* (The Hague: T.M.C. Asser Press, 2007) 48-79.

Bitzer, L.F., 'The Rhetorical Situation', *Philosophy & Rhetoric* 1, 1 (January 1968) pp.1-14.

Bosscher, D.F.J, 'De Partij van de Arbeid en het buitenlands beleid (1945-1974) in: Thomas von der Dunk, *Alleen op de wereld: de Nederlandse worsteling met zichzelf, God en Europa* (Amsterdam: Van Gennep, 2001), 63-83.

Brinkhorst, L.J., 'Nederland in de Europese Gemeenschap: terugblik en vooruitzicht', in: P.M. Hommes, *Nederland en de Europese eenwording* (Den Haag; Nijhoff, 1980), 200-218.

Brink, T. van den, 'The relation between the European and the national legislatures from the perspective of constitutional integrity' in: Fabian Amtenbrink and Peter A.J. van den Berg (eds.), *The constitutional integrity of the European Union* (The Hague: T.M.C. Asser Press, 2010) 117-145.

Brouwer, J.W.L., 'Buitenlandse Zaken: de strijd om meer parlementaire invloed, 1948-1951' in: P.F. Maas and J.M.M.J. Clerx (ed.), *Het kabinet-Drees-Van Schaik (1948-1951), vol. C, Koude Oorlog, dekolonisatie en integratie* (Nijmegen 1996).

Burkens, M.C. and B.P. Vermeulen, 'Maastricht in strijd met de grondwet? Reactie 1' in *Nederlands Jursitenblad (NJB)* 27 (1992) 861-862.

Bruin, R.J. de, 'Cees Hazenbosch en de eeuwige beginselen van Gods Woord' in: G.J. Schutte, *Grenzeloos christelijk-sociaal: internationale activiteiten van de christelijk-sociale beweging*

(Amsterdam/Utrecht: Aksant/CNV, 2009).

Charland, M., 'Constitutive Rhetoric: the Case of the Peuple Québécois', *Quarterly Journal of Speech,* 73 2 (May 1987) 133-150.

Claes, M. and B. de Witte, 'Report on the Netherlands', in: Anne-Marie Slaughter, Alec Stone Sweet en J.H.H. Weiler (eds), *The European court and national courts: doctrine and jurisprudence. Legal change in its social context* (Oxford: Hart, 1998), 171-194.

Doeleman, F., 'West-Europese eenheid' in: *NJB* 13 (1954), 270-272.

Elshout, B. van den, 'Nederland en de onderhandelingen over het Schumanplan' *Leidschrift* 1 (1989) 39-59.

Elzinga, D.J., 'Dualisme en het constitutionele organogram. Revitalisering van BZK dringend noodzakelijk' in Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, *Symposium: 10 jaar dualisering* (The Hague, July 2012), 12-25.

Emmerik, M.L. van, 'De Nederlandse grondwet in een veellagige rechtsorde' in: *Rechtsgeleerd Magazijn THEMIS* 4 (2008) 145-161.

Essen, J.L.F. van, 'Welke vorm voor de Europese samenwerking' *NJB* 17 (1954), pp. 357-359.

Geelhoed L.A., 'Gemeenschapsrecht en nationale wetgeving' in: Geelhoed, L. A. (ed.), *Wetgeving in beweging: verslag van de Landelijke Bestuurskunde Dag op 21 maart 1991 gehouden aan de Katholieke Universiteit Brabant* (Zwolle: Tjeenk Willink, 1991), 51-59.

Geyl, P., 'Historische achtergrond van de Europese eenheidsgedachte', in: Pieter Geyl (ed.), *Vier maal Europa; acht colleges in het kader van het Studium generale der Rijksuniversiteit te Leiden* (s.l.: Samsom, 1959).

Gormley, L.W., 'Some comments on the institutional structure in the Constitution for Europe' in F. Amtenbrink en S.B. Van Baalen, *Europa; eenheid in verscheidenheid? Groningse beschouwingen over de Europese Grondwet* (Den Haag 2005) 93-96.

Grimm, D., 'Does Europe Need a Constitution?' (1995) 1 3 *European Law Journal,* 282-302.

Heerikhuizen, A. van, 'Hades, een vergeten pionier (1899-1979)' in: M. Spiering, *De weerspannigheid van de feiten: opstellen over geschiedenis, politiek, recht en literatuur* (Hilversum: Verloren, 2000).

Heringa, A.W., 'De verdragen van Maastricht in strijd met de Grondwet. Goedkeuring met twee derde meerderheid? *NJB* 24 (1992) 749-752,

Hoetink, C. and K. van Leeuwen, 'Dilemmas of Democracy: Early Postwar Debates on European Integration in the Netherlands', in: W. de Jong, J. Gijsenbergh, T. Houwen, and S. Hollander (red.), *Creative crises of democracy* (Brussel 2011) 189-222.

Hollander, J., 'The Dutch Intellectual Debate on European Integration (1948-present). On Teachings and Life' in: *Journal of European Integration History* 17 2 (2011) 197-218.

Huizinga, J., 'Nederland's Geestesmerk' in: idem, *Verspreide opstellen over de geschiedenis van Nederland* (Amsterdam: Athenaeum Boekhandel/Amsterdam University Press 2007) 282-315.

Hurrelmann, A., 'European Democracy, the "Permissive Consensus" and the collapse of the EU Constitution'

European Law Journal 13 (2007) pp. 343-359.

Koch, K., 'Misbaar over de staat. Het proces van 'ontstatelijking' in Europa', in: A. van Staden (ed.), *De nationale staat: onhoudbaar maar onmisbaar?* (Assen/Den Haag: VanGorcum/Instituut Clingendael, 1996) 17-30.

Laursen, F., 'The Merger Treaty 1965: The First Reform of the Founding European Community Treaties' (working paper prepared for Conference *From Paris to Lisbon: EU Treaties and their Reforms,* Dalhousie University, Halifax, Canada, 22-23 March 2010).

Panhuys, H.F., 'The Netherlands Constitution and International Law', in: *The American Journal of International Law* 47 (1953) 537-558.

Putten, J.G. van, 'De verdeling van bevoegdheden in de Europese politieke gemeenschap' *Internationale Spectator,* 3 (1953), 6-12

Rasmussen, M., 'The Origins of a Legal Revolution. The Early History of the European Court of Justice' *Journal of European Integration History* 14 2 (2008), 77-98.

Ridder, J. den, and G. Arts, 'Gevraagd: een spannende en constructieve discussie over de EU. De publieke opinie en spanningen in de relatie tussen burgers en de EU' in: Raad voor het Openbaar Bestuur (Rob), *Europa, burgerschap en democratie. Over de gespannen relatie tussen burgers en Europa en mogelijkheden om die te ontspannen* (Den Haag: Rob, 2012) 15-28.

Rood, J., 'De politieke finaliteit van het Europese integratieproces', in: *Vrede en veiligheid,* 4 (2000) 554-574.

Stempels, A., 'Europese impulsen uit de volken, *Internationale Spectator* IX 9 (1955) 317-331.

Vauchez, A., 'The Transnational Politics of Judicialization: Van Gend & Loos and the Making of EU Polity,' *European Law Journal* 16 1 (January 2010) 1-28.

Velde, H. te, 'Nederlands nationaal besef vanaf 1800' in: Ton Zwaan and Jan Willem Bezemer (ed.), *Europees labyrint: nationalisme en natievorming in Europa* (Meppel: Boom, 1991)

Voerman, G., 'De Nederlandse politieke partijen en de Europese integratie' in: Kees Aarts en Henk van der Kolk (eds.), *Nederlanders en Europa: het referendum over de Europese grondwet* (Amsterdam: Bakker, 2005) 44-63.

Vries, F. de, 'De Staat van Europa' in F. Amtenbrink en S.B. Van Baalen, *Europa; eenheid in verscheidenheid? Groningse beschouwingen over de Europese Grondwet* (Den Haag 2005) 55-68

Witte, B. de, 'Après Nice: Time for a European Constitution?' (24 September 2012). (Via: http://aei.pitt.edu/65/1/NiceTreatyForum.html.

'The Nice Declaration: Time for a Constitutional Treaty of the European Union' in: *The International Spectator* 36 1 (2001) 21-30.

Articles (newspapers/other media)

ANP, 'Van Mierlo stapt uit de Conventie' (samenvatting)' (26.09.2002).

Giebels, R. (et al), 'Als we het nou maar beter uit kunnen leggen: hoe de ja-campagne nooit van de grond kwam', *NRC Handelsblad Zaterdags Bijvoegsel* (04.06.2005).

Koelé, Th., 'Benelux is tegen Zonnekoning EU' *De Volkskrant* (21.01.2003) (via: www.volkskrant.nl/vk/nl/2668/Buitenland/article/detail/749761/2003/01/21/Benelux-is-tegen-zonnekoning-EU.dhtml).

Kranenburg, M. and E. van der Walle, 'Den Haag wil geen voldongen feiten meer' *NRC Handelsblad* (10.12.2012).

Nuijsenburg, P. van, 'Europarlementariër Hans Nord over jubileum Europese Beweging: "Niemand loopt meer warm voor ideaal van Europese eenwording"' *Leeuwarder Courant* (01.10.1987) 13.

Schaling, F., 'Vernedering voor Den Haag totaal' *NRC Handelsblad* (01.10.1991) 1 and 5.

S.n., 'Angst voor de Zonnekoning; Frans-Duitse vriendschap is weer opgeleefd' *De Groene Amsterdammer* 127 5 (01.02.2003) (via: www.groene.nl/2003/5/angst-voor-de-zonnekoning).

S.n., 'Donner vreest oorlog bij 'nee' EU-grondwet' *Trouw* (18.04.2005) (via: www.trouw.nl/tr/nl/4324/Nieuws/archief/article/detail/1721902/2005/04/18/Donner-vreest-oorlog-bij-nee-EU-grondwet.dhtml)

S.n., 'Giscard leidt conventie over hervorming EU' *NRC Handelsblad* (17.1.2001) (via http://vorige.nrc.nl/krant/article1580080.ece).

S.n., 'Leading the Way' *New York Times* (04.12.1952) 6.

S.n. 'Machtsgreep grote EU-landen dreigt; staatssecretaris Nicolaï tekent protest aan' *NRC Handelsblad* (15.04. 2003) (via: http://vorige.nrc.nl/dossiers/europese_grondwet/achtergronden_analyses/article1611930.ece).

S.n., 'Minister Van den Brink en het Plan Schuman', *De Feanster* (26.05.1950) 1.

S.n., 'Van Mierlo zit er ook als zichzelf' *NRC Handelsblad* (17.2.2002) 4.

S.n., 'La boîte à outils du traité de Lisbonne, par Valéry Giscard d'Estaing' *Le Monde* (27.10.2007) (via: www.lemonde.fr/idees/article/2007/10/26/la-boite-a-outils-du-traite-de-lisbonne-par-valery-giscard-d-estaing_971616_3232.html).

Tiedemann, E., 'Lastig parket. Honderden voorschriften voldoen niet aan Brusselse procedures en zijn in feite ongeldig' *Elsevier* 53 23 (07-06-1997) 12.

Velden, B. van der, 'Gijs de Vries naar Europese Conventie; opvolger Hans van Mierlo' *NRC Handelsblad* (5.10.2002) 3.

Versteegh, K., 'Premier: "Nee tegen Grondwet verzwakt positie Nederland" *NRC Handelsblad* (28.04.2005). (Via: http://vorige.nrc.nl/dossiers/europese_grondwet/europese_conventie_en_grondwet/article1862793.ece).

Case Law

Case 26/62 *NV Algemene Transporten Expeditie Onderneming Van Gend & Loos v. Nederlandse Administratie der Belastingen* [1963] ECR 1.

Case 6/64 Flaminio Costa v ENEL [1964] ECR 585.

Case C-236/85, Commission v. Netherlands [1987] ECR 3989.

OJ 1983 L 109/8 Case C 194/94 CIA Securitel SA v Signalson SA et al. [1996] ECR I-2201.

HP Bulmer ltd. V.J. Bollinger SA et al [1974] Ch. 401 at 418, [1974] CMLR 91 at 111.

Directives

Directive 79/409 on the Conservation of Wild Birds.

Notification Directive 83/189.

Handbooks and Monographs

Aarts, K., and H. van der Kolk (eds.), *Nederlanders en Europa: het referendum over de Europese grondwet,* (Amsterdam: Bakker, 2005).

Aben, H., *Van 1947 naar 1992 en verder* (The Hague: Europese Beweging Nederland, 1988).

Adviesraad Internationale Vraagstukken, *Europa inclusief* (Den Haag: AIV, 1997).

Aerts, R., and H. te Velde, *Land van kleine gebaren: een politieke geschiedenis van Nederland 1780-1990* (Nijmegen/Amsterdam: SUN, 2001).

Amtenbrink, F., and S.B. van Baalen (ed.), *Europa; eenheid in verscheidenheid?: Groningse beschouwingen over de Europese Grondwet* (Den Haag; Boom juridische uitgevers 2005).

Baudet, Th., *De aanval op de natiestaat* (Amsterdam: Bert Bakker, 2011).

Berg, J.Th.J., *Overleeft de Tweede Kamer Europa?: symposium ter gelegenheid van de ingebruikneming van de nieuwbouw van de Tweede Kamer* ('s-Gravenhage: Sdu, 1992).

Beweging van Europese Federalisten (BEF), *Het uur van de Europese Federatie* (The Hague: Beweging van Europese Federalisten, 1952).

Booij, Th. , *Ons groter vaderland Europa,* (Amsterdam: Ten Have, 1953).

Bos, B. van den, *Mirakel en debacle. De Nederlandse besluitvormingover de Politieke Unie in het Verdrag van Maastricht* (Assen: Koninklijke Van Gorcum, 2008).

Boxhoorn, B., and M. Jansen, *De integratie van Europa: een historische balans* (Bussum: Coutinho, 2002).

Broekhuizen, J.C., *Crisis in Europa* (Den Haag: Nederlandse Raad der Europese Beweging, 1951).

Brouwer, J.G., *Verdragsrecht in Nederland: een studie naar de verhouding tussen internationaal en nationaal recht in een historisch perspectief* (Zwolle: Tjeenk Willink, 1992).

Brower, D.R., *The world since 1945. A brief history* (New Jersey: Prentice-Hall Inc., 2000).

Brugmans, H., *Toch ..... Europa!* (The Hague: Beweging van Europese Federalisten, 1954).

Chilcote, R.H., *The Portuguese revolution: state and class in the transition to democracy* (Lanham: Rowman & Littlefield Publishers, 2010).

Claes, M., *The national courts' mandate in the European constitution* (Oxford: Hart publishing, 2006).

Dekker, P., *Marktplaats Europa: vijftig jaar publieke opinie en marktintegratie in de Europese Unie* (Den Haag: Sociaal en Cultureel Planbureau, 2007).

Dik, J. Bron, *Christen-democraten en Europa: een onderzoek naar de houding van de ARP, de CHU en de KVP ten aanzien van de Europese samenwerking en eenwording, 1945-1980* (Groningen: Rijksuniversiteit Groningen, 1980).

D., Desmond, *Ever Closer Union. An introduction to European integration* (Basingstok: Palgrave McMillan, 2005).

Doel, H., *Tien over rood: uitdaging van Nieuw Links aan de PvdA* (Amsterdam: Polak & Van Gennep, 1966).

Drentje, J.H., *Het vrijste volk ter wereld: Thorbecke, Nederland en Europa* (Zwolle: Waanders, 1998).

Desfor Edles, L., *Symbol and ritual in the new Spain: the transition to democracy after Franco* (Cambridge: CUP, 1998)

Eysinga, W.J.M., *Eindrapport van de Commissie nopens de samenwerking tussen regering en Staten-Generaal inzake het buitenlands beleid* (9 Juli 1951).

Fortuyn, W.S., *De puinhopen van acht jaar paars* (Uithoorn: Karakter, 2002).

Zielloos Europa: tegen een Europa van technocraten, bureaucratie, subsidies en onvermijdelijke fraude, (Utrecht: Bruna, 1997).

Fruin, R., *Geschiedenis der Staatsinstellingen in Nederland tot den val der Republiek* (The Hague: Nijhoff, 1922).

Geyl, P., *Studies en strijdschriften: bundel aangeboden aan de schrijver bij zijn aftreden als hoogleraar aan de Rijksuniversiteit te Utrecht* (Groningen: Wolters, 1958).

Grinsven, P., M. van Keulen, J. Rood, *Over verkiezingen, politisering en het Nederlands Europa-beleid* (Den Haag: Nederlands Instituut voor Internationale Betrekkingen Clingendael, 2006).

Griffiths, R. T., *Europe's first constitution: the European political community (1952-1954)* (London: Federal Trust, 2000).

Habermas, J., *Zür Verfassung Europas: ein essay* (Berlin, Suhrkamp, 2011).

Ham, B. van der, *Voortrekkers en baanbrekers. Twee jaar na het referendum Nederland in Europa* (Amsterdam 2007).

Harryvan, A.G. and Jan van der Harst, *Documents on European Union* (Basingstoke/New York: Macmillan/St. Martin's Press, 1997).

In pursuit of influence. The Netherlands' European policy during the formative years of the European Union (1952-1973) (Brussels: P.I.E. Peter Lang, 2009).

Hasselt, W.J.C. van, *Nederlandse staatsregelingen en grondwetten* (Alphen aan den Rijn, Samsom uitgeverij, 1979).

Heldring, J.L., *Dezer jaren: buitenlands beleid & internationale werkelijkheid* (Baarn: In den Toren, 1982).

Heldring, J.L., *Het verschil met anderen* (Amsterdam: Van Oorschot, 1975).

Hellema, D., *Neutraliteit & vrijhandel: de geschiedenis van de Nederlandse buitenlandse betrekkingen* (Utrecht: Spectrum, 2001).

Heerikhuizen, A. van, *Pioniers van een verenigd Europa: bovennationaal denken in het Nederlandse parlement (1946-1951)* (s.l.: 1998).

Israel, J., *The Dutch Republic: its rise, greatness and fall, 1477-1806* (Oxford: Clarendon Press, 1995).

Jong, R. de, Thesis *Een kabinetscampagne in constitutionele mist. Het falen van de campagne voor de Europese grondwet in 2005 verklaard,* (unpublished Master Groningen University, 2009).

Judt, T., *Postwar. A history of Europe since 1945* (London; Heinemann, 2005).

Kapteyn, P., *In de spagaat: tussen Europa en Nederland: tien jaar Europa-debat Vereniging Democratisch Europa* (Amstelveen : EON pers, 2009).

Kapteyn, P.J.G, *Een Europese grondwet: retoriek en realiteit* (Amsterdam: Vossiuspers UvA, 2002).

Kennedy, J.C., *Nieuw Babylon in aanbouw: Nederland in de jaren zestig* (Meppel: Boom, 1995).

Koops, W., *Federalisme: de Canadese variëteit* (The Hague: Nijhoff, 1955).

Kuile, B. H. ter, *Hoe ver ligt Den Haag nog van Brussel?: bespiegelingen op Prinsjesdag over slinkende bevoegdheden van onze provinciale Staten-Generaal binnen de Europese Gemeenschap* (Zwolle: Wolters Kluwer, 1989).

Lauwaars, R.H., *De Verdragen van Amsterdam en Nice over de Europese Unie* (Amsterdam: KNAW, 2002).

Lipgens, W., *Documents on the history of European integration* (Berlin: De Gruyter, 1985).

Europa-Föderationspläne der Widerstandsbewegungen, 1940-1945: eine Dokumentation (München: Oldenbourg, 1968).

Lubbers, R. (ed.), *'Een oorverdovende stilte…': over de plaats van Europa in de Nederlandse politiek,* (Amsterdam: Vereniging Democratisch Europa, 2007).

March, J.G., and Herbert A. Simon, *Organizations* (s.l.: Wiley 1958).

Merrienboer, J.C.F.J., *Mansholt: een biografie* (Amsterdam: Boom, 2006).

Meerssche, P. van de, *Van Jalta tot Malta: politieke geschiedenis van Europa* (Utrecht: Het Spectrum, 1990).

Middelaar, L. van, *De Passage naar Europa. Geschiedenis van een begin* (Groningen: Historische Uitgeverij, 2009).

Mozer, A., *Waar blijft Europa?* (Den Haag: Nederlandse Raad der Europese Beweging, 1951).

Olthof, J., *Patchwork Republic* [working title PhD Thesis] (Groningen University, forthcoming).

Palmer, R.R., J. Colton and L. Kramer, *A history of the modern world* (New York: McGraw-Hill, 2002).

Pelkmans, J., M. Sie Dhian Ho and B. Limonard, *Nederland en de Europese Grondwet* (Amsterdam: Amsterdam University Press, 2003).

Perelman, Ch., *Traité de l'argumentation: la nouvelle rhétorique* (Paris: Presses universitaires des France, 1958).

The realm of rhetoric (Notre Dame: University of Notre Dame Press, 1982).

Retorica en Argumentatie (Ambo: Baarn, 1979).

Rozemond, S., *De gang naar Maastricht* (Den Haag: Nederlands Instituut voor Internationale Betrekkingen Clingendael, 1991).

Ruygers, G.J.N.M., *Eenheid in verscheidenheid*, (The Hague: NREB, 1953).

Salinger, H.D., *De wedergeboorte van Europa: de les van dezen oorlog voor ons werelddeel* (Leiden: Brill, 1945).

Sap, J.W., *De instellingen en de Europese grondwet* (Amstelveen 2006).

Sas, Niek C.F. van, *Onze natuurlijkste bondgenoot: Nederland, Engeland en Europa* (Groningen: Wolters-Noordhoff/Bouma's Boekhuis, 1985).

Sas, N.C.F. van, H. te Velde, M. van Heteren, *De eeuw van de Grondwet: grondwet en politiek in Nederland 1798-1917* (Deventer: Kluwer, 1998).

Schaik, J.R.H., *Eindrapport van de Staatscommissie tot herziening van de grondwet ingesteld bij Koninklijk Besluit van 17 april 1950 no. 25* (The Hague: Staatsdrukkerij- en Uitgeverij bedrijf, 1954).

Schmelzer, N., *Herinneringen van een politiek dier* (Amsterdam: Balans, 2004).

Singelsma, S., *Socialisten, liberalen en Europa: een onderzoek naar de houding van de PvdA en de VVD ten aanzien van de Europese samenwerking en eenwording, 1945-1980* (Groningen: Rijksuniversiteit Groningen, 1980),

S.n., *Europe unites: the story of the campaign for European unity, including a full report of the congress of Europe, held at the Hague, May, 1948* (London: Hollis and Carter, 1949).

S.n., *Treaties establishing the European Communities. Treaties amending these Treaties. Single European Act: resolutions and declarations. I* (Luxembourg: Office for Official Publications of the European Communities, 1987).

S.n., *Resolutions Congress of Europe, The Hague, May, 1948* (Paris: The international committee of the movements for European unity, 1948).

Tang, G.F. van der, *Grondwetsbegrip en grondwetsidee* (Deventer: Gouda Quint 1998).

Tames, I., *'Oorlog voor onze gedachten': oorlog, neutraliteit en identiteit in het Nederlandse publieke debat, 1914-1918* (Hilversum: Verloren, 2006).

Tully, J. *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: CUP, 1995).

Velde, Henk te, *De Grondwet van Nederland* (Amsterdam: Athenaeum-Polak & Van Gennep, 2006).

Voorhoeve, J.J.C., *Peace, profits and principles: a study of Dutch foreign policy* (Leiden: Nijhoff, 1985).

Voisin, A., *Tien jaren, 1947-1957* (The Hague: Beweging van Europese Federalisten, 1957).

Vryonis, S., *Greece on the road to democracy: from the Junta to PASOK, 1974-1986* (New Rochelle, N.Y.: Caratzas, 1991).

Weenink, W.H., *Bankier van de wereld. Bouwer van Europa. Johan Willem Beyen (1897-1976)* (Amsterdam/Rotterdam: Prometheus/NRC Handelsblad, 2005).

Weiler, J., *European constitutionalism beyond the state* (Cambridge, CUP, 2003).

Wiarda, H.J., *The transition to democracy in Spain and Portugal* (Washington D.C.: American Enterprise Institute for Public Policy Research, 1989).

WRR, De Onvoltooide Europese integratie. ('s-Gravenhage: Staatsuitgeverij, 1986).

Miscellaneous

Duinkerken, A. van, 'Nieuw-Nederlandsch lied' in: M.G. Schenk and H.M. Mos (eds.), *Geuzenliedboek 1940-1945* (Amsterdam: Buijten & Schipperheijn, 1975) 11-12.

Frost, R., 'The Road not Taken' in: *Mountain Interval* (1920).

Leefbaar Nederland election manifesto (2002), see: http://dnpp.eldoc.ub.rug.nl/FILES/root/programmas/vp-per-partij/ln/ln02.pdf .

Parliamentary sources

Minutes of meetings in the Lower House

HTK, 1947-1948 (18-03-1948).
HTK, 1947-1948 (19-03-1948).
HTK, 1947-1948 (22-04-1948).
HTK, 1952-1953 (23-07-1953).
HTK, 1951-1952 (30-10-1951).
HTK, 1951-1952 (31-10-1951).
HTK, 1951-1952 (13-03-1952).
HTK, 1951-1952 (14-03-1952).
HTK, 1951-1952, (19-03-1952).
HTK, 1951-1952 (07-05-1952).
HTK, 1952-1953 (02-12-1952).
HTK, 1952-1953 (22-07-1953).
HTK, 1952-1953 (23-07-1953).
HTK, 1957-1958 (01-10-1957).
HTK, 1957-1958 (02-10-1957).
HTK, 1957-1958 (03-10-1957).
HTK, 1957-1958 (04-10-1957).
HTK, 1959-1960, (04-07-1960).
HTK, 1965-1966 (21-06-1966).
HTK, 1968-1969 (09-09-1969).
HTK, 1969-1970 (23-12-1969).
HTK, 1971-1972 (01-12-1971).
HTK, 1971-1972 (13-09-1972).
HTK, 1971-1972 (14-09-1972).
HTK, 1976-1977 (28-10-1976).
HTK, 1977 (22-06-1977).
HTK, 1977-1978 (29-08-1978).
HTK, 1977-1978 (31-08-1978).
HTK, 1977-1978 (05-09-1978).
HTK, 1978-1979 (14-05-1979).
HTK, 1979-1980 (18-03-1980).
HTK, 1979-1980 (25-03-1980).
HTK, 1979-1980 (23-04-1980).
HTK, 1985-1986 (29-10-1985).
HTK, 1985-1986 (29-11-1985).
HTK, 1986-1987 (12-11-1986).
HTK, 1986-1987 (18-11-1986).
HTK, 1987-1988 (22-03-1988).
HTK, 1987-1988 (29-06-1988).
HTK, 1988-1989 (28-06-1989).
HTK, 1989-1990 (01-05-1990).
HTK, 1989-1990 (13-06-1990).
HTK, 1990-1991 (23-05-1991).
HTK, 1991-1992 (26-11-1991).
HTK, 1991-1992 (30-01-1992).
HTK, 1991-1992 (05-02-1992).
HTK, 1991-1992 (17-06-1992).
HTK, 1991-1992 (18-06-1992).
HTK, 1991-1992 (25-06-1992).
HTK, 1991-1992 (11-12-1991).
HTK, 1992-1993 (24-09-1992).
HTK, 1992-1993 (03-11-1992).
HTK, 1992-1993 (04-11-1992).
HTK, 1992-1993 (05-11-1992).
HTK, 1992-1993 (12-11-1992).
HTK, 1994-1995 (17-11-1994).
HTK, 1996-1997 (11-06-1997).
HTK, 1998-1999 (03-11-1998).
HTK, 1998-1999 (05-11-1998).
HTK, 2001-2002 (21-11-2001).
HTK, 2001-2002 (12-12-2001).
HTK, 2001-2002 (19-12-2001).
HTK, 2002-2003, (13-03-2003).
HTK, 2002-2003 (11-06-2003).
HTK, 2002-2003 (14-06-2003).
HTK, 2002-2003 (24-06-2003).
HTK, 2003-2004 (18-11-2003).
HTK, 2003-2004 (20-11-2003).
HTK, 2003-2004 (18-12-2003).
HTK, 2003-2004 (23-06-2004).
HTK, 2004-2005 (02-06-2005).

Bijlagen

HTK, Bijlagen 1947-1948, 774.2 and 3.
HTK, Bijlagen 1947-1948 761.1-4.
HTK, Bijlagen 1948-1949, 1229.2.
HTK, Bijlagen 1950-1951, 2228.3
HTK, Bijlagen 1951-1952 2228.7.
HTK, Bijlagen 1951-1952, 2374.3, 7, 10.
HTK, Bijlagen 1952-1953, 2911. 1, 3, 6, 8, 16
HTK, Bijlagen 1956-1957 4725. 1, 3, 9, 14 21.
HTK, Bijlagen 1959-1960, 5710.2.
HTK, Bijlagen 1965-1966, 8380 (R506).3, 6, 9
HTK, Bijlagen 1969-1970, 10448. 3.
HTK, Bijlagen 1971-1972, 11872. 1-5, 17
HTK, Bijlagen 1975-1976, 13872.3.

HTK, Bijlagen 1976-1977, 14383.3.
HTK, Bijlagen 1979-1980 15049 (R1100) 1, 6, 9, 10 16.
HTK, Bijlagen 1979-1980, 15468.11.
HTK, Bijlagen 1979-1980, 16090.2-4.
HTK, Bijlagen 1984-1985, 19122.2-5, A-C.
HTK, Bijlagen 1985-1986, 19326.1, B, 5-10, 19.
HTK, Bijlagen 1985-1986, 19626. 2-3, B, 5, 9.
HTK, Bijlagen 1987-1988, 20031.5.
HTK, Bijlagen 1989-1990, 20596.6 and 32.
HTK, Bijlagen 1990-1991, 21952.20.
HTK, Bijlagen 1990-1991, 22140. 3, B, and 20.
HTK, Bijlagen 1991-1992, 22647. 1-3, A, 7-8, 11, 13, 17-18, 20 and 30.
HTK, Bijlagen 1992-1993 21501-20, no. 25.
HTK, Bijlagen 1993-1994, 23867 (R 1511) no.3, A, and 5.
HTK, Bijlagen 1994-1995, 23987. 2.
HTK, Bijlagen 1994-1995, 24128. 2.
HTK, Bijlagen 1994-1995, 24167.2.
HTK, Bijlagen 1994-1995, 24251. 2.
HTK, Bijlagen 1995-1996, 24609.1.
HTK, Bijlagen 1997-1998, 25922 (R 1613) no. 3-5, 9, and A.
HTK, Bijlagen 2000-2001, 28449.1
HTK, Bijlagen 2001-2002, 21501-20.
HTK, Bijlagen 2000-2001, 27818 (R 1692).3, A, and 5.
HTK, Bijlagen 2000-2001, 27407.9 and184.
HTK, Bijlagen 2001-2002, 28604. 3,
HTK, Bijlagen 2002-2003, 28473.3 nr. 2/158; nr. 3/158a; A; nr.6/158b; nr. 8 /158c; nr. 11/158d; nr.33/158e, and nr. 35/1580.
HTK, Bijlagen 2002-2003, 28885. 2-3, and 8.
HTK, Bijlagen 2004-2005, 30 025 (R 1783) 3, A, and 4.
HTK, Bijlagen 2005-2006, 29993.24.
HTK, Bijlagen 2006-2007, 30874 (R1818).
HTK, 2007-2008, 31091.4.
HTK, 2007-2008, 31384, (R1850) 3.
HTK, 2011-2012, 33221.2.

Minutes of meetings in the Upper House

HEK, 1951-1952 (13-02-1952).
HEK, 1951-1952, (06-05-1952).
HEK, 1952-1953 (19-05-1953).
HEK, 1952-1953 (20-05-1953).
HEK, 1953-1954 (19-01-1954).
HEK, 1953-1954 (20-01-1954).
HEK, 1957-1958 (03-12-1957).
HEK, 1957-1958 (04-12-1957).
HEK, 1966-1967 (25-10-1966).
HEK, 1967 (11-07-1967).
HEK, 1972-1973 (14-11-1972).
HEK, 1977 (28-06-1977).
HEK, 1977-1978 (16-05-1978).
HEK, 1978-1979 (12-12-1978).
HEK, 1979-1980 (10-06-1980).
HEK, 1980-1981(09-12-1980).
HEK, 1985-1986 (18-12-1985).
HEK, 1986-1987 (12-12-1986).
HEK, 1986-1987 (15-12-1986).
HEK, 1986-1987 (16-12-1986).
HEK, 1992-1993 (15-12-1992).
HEK, 1992-1993 (16-02-1993).
HEK, 1992-1993(23-02-1993).
HEK, 1994-1995 (13-12-1994).
HEK, 1997-1998 (02-12-1997).
HEK, 1998-1999 (21-12-1998).
HEK, 2001-2002 (18-12-2001).
HEK, 2002-2003 (17-06-2003).
HEK, 2003-2004 (04-11-2003).
HEK, 2004-2005 (18-01-2005).

Minutes of meetings of Committees and Combined meetings

HOCV, 1975-1976 (22-03-1976).
HOCV, 1976-1977 (21-03-1977).
HOCV, 1976-1977 (22-08-1977).
HUCV, 1977-1978 (28-08-1978).
HOCV, 1979-1980 (29-04-1980).
HUCV 1980-1981 (24-11-1980).
HUCV, 1984-1985 (25-03-1985).
HUCV, 1987-1988 (07-03-1988).
HUCV, 1989-1990 (11-06-1990).

Other parliamentary sources

Council of State, *Advice of the Council of State on the approval of the Treaty Establishing a European Economic Community*, (18.06.1957)

Nader Rapport in reaction to the Advice of the Council of State on the approval of the Treaty Establishing a European Economic Community (02.07.1957).

Minutes of the meeting of the Cabinet (01.07.1957)

Reports, political plans and (white/green) papers

Albert, M. and R.J. Ball, *Towards European economic recovery in the 1980s; report presented to the European Parliament*, European Parliament Working Documents 1983-1984 (31 August 1983).

Davignon Report, *Bulletin of the European Communities*. November 1970, no. 11. (Luxembourg: Office for Official Publications of the European Communities).

Draft Treaty articles with a view to achieving Political Union, Non-paper by the Luxembourg Presidency, Europe, Documents, No. 1709/1710, 3 May 1991.

Draft Treaty on the Union, Europe, Documents, No.1722/1723, 5 July 1991

Genscher/Colombo Plan. For the full text see: www.europarl.europa.eu/brussels/website/media/Basis/Geschichte/EGKSbisEWG/Pdf/Genscher_Colombo.pdf.

Report on Economic and Monetary Union in the European Community (Brussels, Luxembourg, OOPEC, 1989).

Sociaal Economische Raad, *Advies inzake de verzoeken om toetreding tot de Europese Gemeenschap van Griekenland, Portugal en Spanje* (The Hague: SER, 1977).

Wallage, J., *In dienst van de democratie. Het rapport van de Commissie Toekomst Overheidscommunicatie* (August 2001).

White Paper written by Lord Cockfield, COM (85) 310 final, 14.6.1985. Full text can also be downloaded via: http://europa.eu/documents/comm/white_papers/pdf/com1985_0310_f_en.pdf

Staatscommissie Grondwet, *Rapport Staatscommissie Grondwet* (2010).

Speeches

Chirac's speech, given before the German *Bundestag*, can be viewed on: www.cvce.eu/content/publication/2005/1/20/6a747c46-88db-47ec-bc8c-55c8b161f4dc/publishable_en.pdf.

Gouzy, J.P., 'The Congress of Europe 7-11 May 1948' (lecture given by Jean-Pierre Gouzy in honour of the 60th anniversary of the European Movement and the 50the anniversary of the Treaty of Rome, on 10 February 2008 at the Pont d'Oye Meeting Centre in Habay-la-Neuve, Belgium).

'Introductory speech by president V. Giscard d'Estaing to the convention on the future of Europe', p. 6, via http://european-convention.eu.int/docs/speeches/1.pdf.

Speech of Barack Obama before the UN General Assembly (23 September 2009) via: www.whitehouse.gov/the_press_office/Remarks-by-the-President-to-the-United-Nations-General-Assembly.

Press conference Charles de Gaulle, 15 May 1962, via: see: www.ina.fr/fresques/jalons/fiche-media/InaEdu00096/conference-de-presse-du-general-de-gaulle-du-15-mai-1962.html.

Press conference Charles de Gaulle, 14 January 1963.

Treaties and agreements

EDC Treaty. For the original (French) text of the treaty see: http://mjp.univ-perp.fr/europe/1952ced4.htm.

Treaty Establishing a European Economic Community. The full text of the treaty is online available via: http://eurlex.europa.eu/en/treaties/index.htm

Luxembourg Compromise. See Bulletin of the European Communities, March 1966, 3-66, there 5-110r www.eurotreaties.com/luxembourg.pdf

Merger Treaty. An English version of the text is available in: Treaties establishing the European Communities. Treaties amending these Treaties. Single European Act: resolutions and declarations. 1 (Luxembourg: Office for Official Publications of the European Communities, 1987) 823-880.

Agreement on the accession of Norway, Denmark, Ireland and the United Kingdom (1972): Official Journal (OJ) L 73 (27 March 1972).

Act Concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage: OJ L278/5 (08-10-1976).

Agreements on accession of Greece and Spain/Portugal. See, respectively: OJ L 291 of 19 November 1979 and OJ L 302 of 15 November 1985.

Solemn Declaration on European Union (Stuttgart Declaration): Bulletin of the European Communities, June 1983 6/1983 pp. 24-29.

Single European Act. OJ L 169 of 29.6.1987.

Schengen Agreement. See: www.statewatch.org/semdoc/assets/files/keytexts/SchAg.htm

Convention implementing the Schengen Agreement, see: OJ L 239 (22-09-2000) P. 0019 - 0062.

Treaty on European Union: OJ 1992 C 191/1.

Treaty of Amsterdam: OJ C 340, 10 November 1997.

Treaty of Nice: OJ 2001/C 80/01.

Laeken Declaration: Bulletin17.12.2001. For the full text see: www.europarl.europa.eu/summits/pdf/lae2_en.pdf.

Treaty Establishing a Constitution for Europe, OJ 2004/C 310/01.

Endnotes

1 Speech before the UN General Assembly, 23 September 2009.

2 In the weeks following the opening of the digital 'complaints office', the European Commission, as well as the European Parliament and the Council of Europe declared themselves against the website of the PVV and asked the Dutch prime minister Mark Rutte to distance himself from this initiative. Rutte, however, refused.

3 Interview of Paul Arlman with the author on 20 May 2011.

4 The constitutionalisation of Europe must be interpreted here in a substantive – and not in a formal – manner. From the signing of the Treaties of Rome (1957) onwards, the European Economic Community, and later the EU, acquired a constitutional basis, that was effectively further developed by the European institutions.

5 See the many publications trying to explain the outcome of the referendum, among others: K. Aarts, H. van der Kolk (eds.), *Nederlanders en Europa: het referendum over de Europese grondwet*, (Amsterdam: Bakker, 2005); P. van Grinsven, M. van Keulen, J. Rood, *Over verkiezingen, politisering en het Nederlands Europabeleid* (Den Haag: Nederlands Instituut voor Internationale Betrekkingen Clingendael, 2006); R. Lubbers (ed.), *'Een oorverdovende stilte…': over de plaats van Europa in de Nederlandse politiek*, (Amsterdam: Vereniging Democratisch Europa, 2007).

6 In 1995, Dieter Grimm was the first to address the issue of the absence of a European demos. Dieter Grimm, 'Does Europe Need a Constitution?' (1995) 1 3 *European Law Journal,* 282-302. After the publication of this article, 'the no-demos thesis' was discussed numerous times.

7 An almost endless series of titles can be mentioned here. Considering their general importance in the contemporary academic and/or public debate on European integration or recent attention for the publication within the Netherlands, the following titles are listed here: Joseph Weiler, *European constitutionalism beyond the state* (Cambridge, CUP, 2003); Jürgen Habermas, *Zür Verfassung Europas: ein essay* (Berlin, Suhrkamp, 2011); Luuk van Middelaar, *De Passage naar Europa. Geschiedenis van een begin* (Groningen: Historische Uitgeverij, 2009); Thierry Baudet, *De aanval op de natiestaat* (Amsterdam, Bert Bakker, 2012).

8 The *Contested Constitutions* project falls within *Contested Democracy Programme* as set up and financed by the *Nederlandse Organisatie voor Wetenschappelijk Onderzoek* (NWO, i.e. the Netherlands Organisation for Scientific Research). For a summary of the substantive and organisational details regarding the Contested Constitutions project, see: www.narcis.nl/research/RecordID/OND1328598/Language/nl. (last visit 28-02-2013).

9 In order of ratification: the treaties establishing the European Coal and Steel Community (1951), the European Economic Community and Euratom (1957), the Merger Treaty (1967), the treaties on the various accessions (1972, 1981, 1986 1995), the decision to directly elect the members of the European Parliament (1979), the Single European Act (1986), the Schengen

Agreements (1985 and 1990), the treaties of Maastricht (1992), Amsterdam (1997) and Nice (2001) and the Treaty Establishing a Constitution for Europe (2005).

10 When the government presents a Bill to parliament, it accounts for it to Parliament in a so called 'Explanatory Memorandum'. Subsequently, parliament gives its initial verdict in a 'preliminary report'. To this report, the government answers in a 'Memorandum in reply.' These, and the request for advice with the Dutch Council of State, are the most important political rituals that structurally precede the described debates in parliament.

11 A full list of names and function details is recorded in the back of this work. See table of contents.

12 For a summary of the substantive and organisational details regarding the Contested Constitutions project, see: www.narcis.nl/research/RecordID/ OND1328598/Language/nl. (last visit 17-02-2013).

13 The singular is *topos*.

14 Chaïm Perelman, *Traité de l'argumentation: la nouvelle rhétorique* (Paris: Presses universitaires des France, 1958) ; Chaïm Perelman, *The realm of rhetoric* (Notre Dame: University of Notre Dame Press, 1982); Lloyd F. Bitzer, 'The Rhetorical Situation', *Philosophy & Rhetoric* 1, 1 (January 1968) pp. 1-14; Maurice Charland, 'Constitutive Rhetoric: the Case of the Peuple Québécois', *Quarterly Journal of Speech,* 73 2 (May 1987) pp. 133-150.

15 Charland, 'Constitutive Rhetoric: the Case of the Peuple Québécois', 134.

16 For an application of Charland's theory to attempts to develop a European civil code, see: Peter A.J. van den Berg, 'Constitutive rhetoric: the case of the 'European civil code' in: M. Milo, J.H.A. Lokin, C.H. van Rhee and J. Smits (eds.), *Civil Traditions, Codifications and Unification* (Maastricht 2013) (forthcoming).

17 Perelman, *Traité de l'argumentation: la nouvelle rhétorique,* see in particular: Tome Second, chapitre IV, 550-609 .

18 Perelman, *The realm of rhetoric*, 53-80.

19 Arguments based on a liaison of coexistence emphasise the relation between a person and his acting, for example arguments based on authority. Especially in the parliamentary debates, these arguments were rare – spokesmen in parliament often claim the same amount of authority – and therefore they are left out of further consideration here.

20 Perelman, *The realm of rhetoric*, 82-83.

21 Ibid., 106-125 and Charland, 'Constitutive Rhetoric: the Case of the Peuple Québécois'.

22 Perelman, *The realm of rhetoric*, 126.

23 Ibid.

24 Lloyd F. Bitzer, 'The Rhetorical Situation', *Philosophy & Rhetoric* 1, 1 (January 1968) pp. 1-14.

25 Bitzer, 'The Rhetorical Situation', 4.

26 Minister of Foreign Affairs Johan Willem Beyen spoke these words in a meeting in the Dutch Lower House on 23 July 1953. Handelingen Tweede Kamer (HTK) (Minutes of the Lower House), 1952-1953 (23-07-1953) 1003. All the minutes of parliamentary meetings until 1995 are available through www.statengeneraaldigitaal.nl. For those of a later date, see www.overheid.nl.

27 For factual details on the early-post war developments, the various conferences and restoration initiatives mentioned, see R.R. Palmer, Joel Colton and Lloyd Kramer, *A history of the modern world* (New York: McGraw-Hill, 2002) 828-853; Daniel R. Brower, *The world since 1945. A brief history* (New Jersey: Prentice-Hall Inc., 2000) 27-56. For a historical interpretation, see: Tony Judt, *Postwar. A history of Europe since 1945* (London: Heinemann, 2005).

28 For extensive elaborations on these pre-1945 ideas and initiatives see the works of: Richard Nicolaus (Count) Coudenhove-Kalergi on the pan-European movement and the bringing about of a united Europe; Hans Dietrich Salinger (pseudonym: Hades), *De wedergeboorte van Europa: de les van dezen oorlog voor ons werelddeel* (Leiden: Brill, 1945); Annemarie van Heerikhuizen, 'Hades, een vergeten pionier (1899-1979)' in: M. Spiering, *De weerspannigheid van de feiten: opstellen over geschiedenis, politiek, recht en literatuur* (Hilversum: Verloren, 2000); Walter Lipgens, *Europa-Föderationspläne der Widerstandsbewegungen, 1940-1945: eine Dokumentation* (München Oldenbourg, 1968): (In particular chapter V; 'Europa-Pläne Niederländischer Widerstandsgruppen', 262-309). For a more international overview of early ideas for a united Europe see: Alexander, Stempels, 'Europese impulsen uit de volken, *Internationale Spectator* ix 9 (1955) 317-331.

29 Various Dutch advocates of a European federation, such as Alfred Mozer (1905-1979) and Hendrik Brugmans (1906-1957), who would afterwards make name as leaders of the main Dutch pressure groups for a European federation, took part.

30 A.G. Harryvan and Jan van der Harst, *Documents on European Union* (Basingstoke/New York: Macmillan/St. Martin's Press, 1997) 25.

31 For the full text of the Hertenstein programme see: Harryvan and Van der Harst, *Documents on European Union*, 42-43; Walter Lipgens, *Documents on the history of European integration* (Berlin: De Gruyter, 1985).

32 The full text of the speech can be found in Harryvan and Van der Harst, *Documents on European Union*, 38-41.

33 For an enumeration of the other initiatives see, Jean-Pierre Gouzy, 'The Congress of Europe 7-11 May 1948' (lecture given by Jean-Pierre Gouzy in honour of the 60th anniversary of the European Movement and the 50the anniversary of the Treaty of Rome, on 10 February 2008 at the Pont d'Oye Meeting Centre in Habay-la-Neuve, Belgium), 11-13. The full text can be downloaded via: www.european-movement.org/fileadmin/files_emi/invitations/Gouzy_EN_for_Website.pdf. (last visit 19-12-2012).

34 The BEF was a post-war initiative of private individuals who wanted to join forces in the bringing about of a united Europe. The EB was run by private citizens and public organisations in several fields and pursued similar ideals. After the formal establishment of the European Movement International in 1948, the Dutch European Movement associated itself with the international movement. In 1958 both the BEF and the EB merged into one and assumed the name *Europese Beweging Nederland* (EBN). See also: Henk Aben, *Van 1947 naar 1992 en verder* (The Hague: Europese Beweging Nederland, 1988) and www.europesebeweging.nl. (last visited 19-12-2012).

35 These organisations merged under the name of the 'International Committee of the Movements for European Unity'.

36 www.europa-nu.nl/id/vhv5eu10r4uz/60e_verjaardag_europees_congres_in_den#p2. (last visit 19-03-2012).

37 Also Ireland, Turkey and Liechtenstein had sent some representatives. Also from Bulgaria, Canada, Czechoslovakia, Finland, Hungary, Poland, Romania, Spain, Yugoslavia observers participated in the congress.

38 For more details on the composition of the delegations, see Gouzy, 'The congress of Europe 7-11 May 1948', 4-5.

39 A list of abbreviations of Dutch political parties and their meaning in Dutch and English is recorded at the back of this work. See table of contents.

40 This Hall of Knights was built in the 13th century and is used mainly for important ceremonial gatherings during the Dutch parliamentary year.

41 Gouzy, 'The congress of Europe 7-11 May 1948', 4.

42 See the political resolution in: S.n., *Resolutions Congress of Europe,* The Hague, May 1948. For a full description of the proceedings of the Congress, see also: S.n., *Europe unites: the story of the campaign for European unity, including a full report of the congress of Europe, held at the Hague, May 1948* (London: Hollis and Carter, 1949).

43 S.n., *Resolutions Congress of Europe.*

44 Remieg Aerts e.a., *Land van kleine gebaren: een politieke geschiedenis van Nederland 1780-1990* (Nijmegen/Amsterdam: SUN, 2001), 265.

45 The military actions of the Netherlands in the summer of 1947 and the winter of 1948-1949, against the Indonesian freedom-fighters – better known as the Dutch 'police actions'– are amongst the most controversial episodes in the Dutch national history.

46 Since the 1970s this became a popular expression to express the Dutch fear to become, after the loss of the colonies in the far East, an unimportant country that would be at the mercy of the whims of the great European powers. Although its origin is contested, it is clear that the expression must stem from the twentieth century and probably from the early post-war era in which fear for the loss of the Dutch Indies developed quickly. It was the Dutch historian Professor Han Baudet (1919-1998) that gave the expression its well-known character. See: H. Baudet, 'Nederland en de rang van Denemarken' *BMGN* , XC 3 (1975), 430-443.

47 On the 'special relationship' between the Netherlands and the UK, see, for instance, Niek C.F. van Sas, *Onze natuurlijkste bondgenoot: Nederland, Engeland en Europa* (Groningen: Wolters-Noordhoff/Bouma's Boekhuis, 1985).

48 Johan Huizinga, 'Nederland's Geestesmerk' in: idem, *Verspreide opstellen over de geschiedenis van Nederland* (Amsterdam: Athenaeum Boekhandel/Amsterdam University Press 2007) 282-315, there 314.

49 James C. Kennedy, *Nieuw Babylon in aanbouw : Nederland in de jaren zestig* (Meppel: Boom, 1995), 57-58; Paul Dekker, *Marktplaats Europa: vijftig jaar publieke opinie en marktintegratie in de Europese Unie* (Den Haag: Sociaal en Cultureel Planbureau, 2007), 19-21.

50 For a study of social-democratic and liberal political attitudes towards European integration: Sybren Singelsma, *Socialisten, liberalen en Europa: een onderzoek naar de houding van de PvdA en de VVD ten aanzien van de Europese samenwerking en eenwording, 1945-1980* (Groningen: Rijksuniversiteit Groningen, 1980), 2-3.

51 Jan Bron Dik, *Christen-democraten en Europa: een onderzoek naar de houding van de ARP, de CHU en de KVP ten aanzien van de Europese samenwerking en eenwording, 1945-1980 (*Groningen: Rijksuniversiteit Groningen, 1980), 6.

52 See, among others, J.C. Broekhuizen, *Crisis in Europa* (Den Haag: Nederlandse Raad der Europese Beweging, 1951); See also A. Mozer, *Waar blijft Europa?* (Den Haag: Nederlandse Raad der Europese Beweging, 1951); Beweging van Europese Federalisten (BEF), *Het uur van de Europese Federatie* (The Hague: Beweging van Europese Federalisten, 1952). See also: Hollander, 'The Dutch Intellectual Debate on European Integration (1948-present). On Teachings and Life' in: *Journal of European integration history* 17 2 (2011) 197-218, there 200-203.

53 Beweging van Europese Federalisten (BEF), *Het uur van de Europese Federatie*, 22.

54 Ibid., 18-19, 24-27.

55 See the Political Resolution, drafted by the Congress of Europe in The Hague (7-10 May 1948). See: The international committee of the movements for European unity, *Resolutions Congress of Europe, The Hague, May 1948* (Paris: The international committee of the movements for European unity, 1948).

56 I am indebted to Jos Kapteyn for pointing out this perspective.

57 For the history of the Dutch Republic see: Jonathan Israel, *The Dutch Republic: its rise, greatness and fall, 1477-1806* (Oxford: Clarendon Press, 1995).

58 For more on neutrality and free trade as the two traditional foreign policy principles of the Netherlands, see; J.J.C. Voorhoeve, *Peace, profits and principles: a study of Dutch foreign policy* (Leiden: Nijhoff, 1985); Duco Hellema, *Neutraliteit & vrijhandel: de geschiedenis van de Nederlandse buitenlandse betrekkingen* (Utrecht: Spectrum, 2001); Ismee Tames, *'Oorlog voor onze gedachten': oorlog, neutraliteit en identiteit in het Nederlandse publieke debat, 1914-1918* (Hilversum: Verloren, 2006).

59 Hellema, *Neutraliteit & vrijhandel*, 43.

60 Ismee Tames, *'Oorlog voor onze gedachten': oorlog, neutraliteit en identiteit in het Nederlandse publieke debat*, 18.

61 Examples of this are the establishment of *Cour Permanente d'Arbitrage* (1899) and the *Hague Academy for International Law* (1914). Starting with the United Nations International Court of Justice in 1945, after the Second World War other international courts and tribunals (the ICTY (1993), ICC [2002]) were established in the Netherlands.

62 Translation: 'The fostering of peace is the task of the judge.'

63 In the literature Hugo de Groot is also referred to as Huig de Groot, or (Hugo) Grotius. In his work *De Iure Belli ac Pacis* (1625) Grotius elaborated on his primary aim to uphold in times of interstate conflict the same standards of civilisation as applied in times of peace. In order to achieve this, he pled for a strict regulation of warfare. His

Mare Liberum (1609) developed the legal framework of free trade at sea.

64 This is in line with, and from a parliamentary perspective also strengthens an observation made earlier by the Dutch professor of Dutch History, Henk te Velde: 'Well then, what mission more beautiful for a small country than trying to promote the international, European and Atlantic community. […] International cooperation was simply continuing a national tradition. See H. te Velde, 'Nederlands nationaal besef vanaf 1800' in: Ton Zwaan and Jan Willem Bezemer (ed.), *Europees labyrint: nationalisme en natievorming in Europa* (Meppel: Boom, 1991) 183.

65 During the period 1945-1958 the Netherlands was subsequently governed by six Catholic-socialist cabinets in a row. These coalitions 'on broad footing' were deemed necessary to help to get the Netherlands on its way in the process of post-war rebuilding.

66 The first post-war Catholic-red coalition was a so called 'emergency cabinet', appointed by the Queen, with the assignment to put things politically and economically right after the liberation. This cabinet was put together by Willem Schermerhorn and namesake Willem Drees (both PvdA). It was in function between June 1945 and July 1946. Elections for the Lower House in May 1946 brought Louis Beel to power.

67 For the full text of the treaty see HTK, Bijlagen 1947-1948, 774.2.

68 See respectively HTK, Bijlagen 1947-1948, 774.2 and 3.

69 HTK, Bijlagen 1947-1948, 774.3.

70 Ibid., p. 7.

71 HTK, 1947-1948 (18-03-1948) See, among others, the contributions to the debate of the liberal representative Gijsbertus Vonk (VVD), p.1570; the anti-revolutionary representative Sieuwert Bruins Slot (ARP) p. 1572; the catholic representative Leonardus Kortenhorst (KVP), p. 1585. See also: HTK, 1947-1948 (22-04-1948). In particular the contributions of Marinus Van der Goes van Naters (PvdA) p. 1625; the Catholics Jos Serrarens (KVP) p. 1628 and Maan Sassen (KVP) p.1635; and Gijsbertus Vonk (VVD) p. 1630.

72 Gijsbertus Vonk (VVD), in HTK, 1947-1948 (18-03-1948) p.1570.

73 Ibid.

74 See the contribution to the debate of Pim baron van Boetzelaer van Oosterhout, the catholic Minister of Internal Affairs in the Beel I cabinet. HTK, 1947-1948 (19-03-1948) 1588.

75 See (among others) Jan Schmal of the Christian Historical Union [CHU]) in HTK, 1947-1948 (18-03-1948) 1569; Sieuwert Bruins Slot of the Anti-Revolutionary Party (ARP) in idem, 1572; and Maan Sassen (KVP) in HTK, 1947-1948 (19-03-1948), 1576.

76 Annemarie van Heerikhuizen, *Pioniers van een verenigd Europa: bovennationaal denken in het Nederlandse parlement (1946-1951)* (s.l.: 1998), 70. For details on the British all-parties motion see Carla Hoetink en Karin van Leeuwen, 'Dilemmas of Democracy: Early Post war Debates on European Integration in the Netherlands', in: W. de Jong, J. Gijsenbergh, T. Houwen, and S. Hollander (red.), *Creative crises of democracy* (Brussels 2011) 189-222, there 193, footnote 30.

77 Other representatives that signed the draft motion were Geert Ruygers (PvdA), Maan Sassen (KVP), Corry Tendeloo (PvdA) and Carl Romme

(KVP). However, in references the motion is now commonly referred to as the motion 'Van der Goes van Naters/ Serrarens'.

78 HTK, 1947-1948 (18-03-1948) 1565.

79 Draft motion Van der Goes van Naters/Serrarens, HTK, Bijlagen 1947-1948, 761.1. On 19 March 1948, before the motion was put up for vote, it was amended for the first time. For this amended version see HTK, Bijlagen 1947-1948, 761.2. Between the motion in first and second draft there was not a significant difference in wording and meaning. In April the motion was again amended twice. See HTK, Bijlagen 1947-1948 761.3 and 741.4.

80 HTK, Bijlagen 1947-1948, 761.1.

81 HTK, 1947-1948 (18-03-1948) 1565.

82 Gijsbertus Vonk (VVD) in HTK, 1947-1948 (22-04-1948) 1632.

83 Sieuwert Bruins Slot (ARP) in HTK, 1947-1948 (18-03 1948) 1572 and HTK, 1947-1948 (22-04-1948) 1628.

84 HTK, 1947-1948 (22-04-1948) 1643.

85 HTK, 1947-1948 Bijlagen 761.4.

86 HTK, 1947-1948 (22-04-1948). See for example the contribution of Gerben Wagenaar (CPN) at p. 1633.

87 HTK, Bijlagen 1948-1949, 1229.2, p. 2.

88 Ibid.

89 For the Schuman Declaration see: Harryvan en Van der Harst, *Documents on European Union*, 61-63.

90 Ibid., 61.

91 S.n., 'Minister Van den Brink en het Plan Schuman', *De Feanster* (26-05-1950) 1.

92 Ibid.

93 Bas van den Elshout, 'Nederland en de onderhandelingen over het Schumanplan' *Leidschrift* 1 (1989) pp. 39-59, here 42.

94 The first Drees cabinet was composed of members of the PvdA, KVP, CHU and VVD.

95 Van den Elshout, 'Nederland en de onderhandelingen over het Schumanplan', 42-43.

96 Ibid., 47.

97 This delegation was led by Dirk Spierenburg, at the time the director-general for Foreign Economic Relations at the Dutch Ministry for Economic Affairs. Max Kohnstamm, the head of the Germany Department of the Ministry of Foreign Affairs, functioned as his deputy. In later years, the latter would become famous as a prominent champion of (federal) European integration.

98 Van den Elshout, 'Nederland en de onderhandelingen over het Schumanplan', 56.

99 The other signatory states were Italy, Luxembourg, Belgium, France, and Germany.

100 HTK, Bijlagen 1950-1951, 2228.3.

101 Ibid., 54.

102 Ibid., 26.

103 Ibid., 54.

104 Hollander, 'The Dutch Intellectual Debate on European Integration (1948-present)', 200-203.

105 HTK, Bijlagen 1951-1952 2228.7, p.59.

106 Ibid.

107 From the written preparations, the exact sender of the comments cannot be retrieved.

108 HTK, 1951-1952 (30-10-1951), 166.

109 Ibid., 160.

110 Ibid., 160.

111 HTK, Bijlagen 1951-1952, 2228.7, p.60. See also Marga Klompé in HTK, 1951-1952 (30-10-1951), 178.

112 Marga Klompé: 'My political friends and I indeed consider the federal form of European cooperation as the only right one.' in: HTK, 1951-1952 (30-10-1951), 166.

113 Ibid., 183. See also the animated speech of Jan Schmal (CHU): 'It cannot be helped, we are Dutch and Europeans because of that, also without being willing to give up our Dutch citizenship. A Europe in which that quality would be taken from us, is not a democracy, it is a "democrature" at the most, a word that should be associated with caricature and dictatorship […].' In: Ibid., 161.

114 See, for instance, Van der Goes van Naters in HTK, 1951-1952 (30-10-1951), 164. See Minister of Economic Affairs Jan van den Brink (KVP) in HTK, 1951-1952 (31-10-1951), 203.

115 See Benno Stokvis (CPN) in HTK, 1951-1952 (30-10-1951) 192-193 and Jan Schalker (CPN) in *Handelingen Eerste Kamer* (HEK, Minutes of the Upper House), 1951-1952 (13-02-1952) 223.

116 HTK, Bijlagen 1951-1952 2228.7, p.59.

117 HTK, 1951-1952 (31-10-1951) 210.

118 J.G. Brouwer, *Verdragsrecht in Nederland : een studie naar de verhouding tussen internationaal en nationaal recht in een historisch perspectief* (Zwolle: Tjeenk Willink, 1992), 13; but see also Robert Fruin, *Geschiedenis der Staatsinstellingen in Nederland tot den val der Republiek* (The Hague: Nijhoff, 1922), 311.

119 Brouwer, *Verdragsrecht in Nederland*, 13-19.

120 J.G. Brouwer, *Verdragsrecht in Nederland,* see chapters III, IV and V.

121 Brouwer, Verdragsrecht in Nederland, 121. For the statistic details on the increasing number of international treaties see also: W.J.M. van Eysinga, *Eindrapport van de Commissie nopens de samenwerking tussen regering en Staten-Generaal inzake het buitenlands beleid* (9 Juli 1951) (The Hague: Staatsdrukkerij, 1951), 15.

122 J.R.H.van Schaik, Eindrapport van de Staatscommissie tot herziening van de grondwet ingesteld bij Koninklijk Besluit van 17 april 1950 no. 25 (The Hague: Staatsdrukkerij- en Uitgeverij bedrijf, 1954), 9.

123 J.W.L. Brouwer, 'Buitenlandse Zaken: de strijd om meer parlementaire invloed, 1948-1951' in: P.F. Maas and J.M.M.J. Clerx (ed.), *Het kabinet-Drees-Van Schaik (1948-1951)*, vol. C, *Koude Oorlog, dekolonisatie en integratie* (Nijmegen 1996) 175.

124 Van Schaik, *Eindrapport van de Staatscommissie*, 11.

125 Van Eysinga, *Eindrapport van de Commissie nopens de samenwerking tussen regering en Staten-Generaal inzake het buitenlands beleid,* 10.

126 Ibid., 6 and 9.

127 Ibid., 9.

128 Ibid.

129 Ibid.

130 Brouwer, *Verdragsrecht in Nederland*, 112-113; Van Eysinga, *Eindrapport van de Commissie nopens de samenwerking tussen regering en Staten-Generaal inzake het buitenlands beleid*, 15.

131 Van Eysinga, *Eindrapport van de Commissie nopens de samenwerking tussen regering en Staten-Generaal inzake het buitenlands beleid*, 27.

132 Ibid., 18, 25.

133 Ibid., 25.

134 Ibid., 14, 24-25.

135 In addition to the interim report of July 1951, the Van Schaik Committee presented its final report in 1954. Since in this report the Committee reaffirmed the suggestions proposed in the interim report, it is not necessary to discuss the final report separately.

136 See for instance the consideration of the Van Schaik Committee with respect to the exceptions to the rule of parliamentary approval as introduced by the Van Eysinga Committee in draft article 60. On p.157 of the Van Schaik report it is discussed that in certain urgent and pressing cases government must be able to bind itself freely – i.e. without the need to consult Parliament – also when an agreement is not signed for a fixed time span. Here, facilitating international politics is clearly preferred over control by parliament. *Van Schaik,* Eindrapport van de Staatsommissie, 157.

137 For example: whereas in the draft of Van Eysinga Article 60 stated that in principle all *treaties* needed to be approved, Van Schaiks' Committee members preferred the term 'agreements'. This was mainly a technical amendment without relevant consequences that need to be explained here. See Ibid., 155-156.

138 Ibid., 154.

139 This extension was suggested by the Van Eysinga Committee to express that the development of the international legal order did not only depend on the activities and goodwill of the Dutch government.

140 Van Schaik, *Eindrapport van de Staatscommissie*, 154.

141 Ibid., 153.

142 Ibid., 154.

143 Ibid., 153.

144 Ibid., 154.

145 HTK, Bijlagen 1951-1952, 2374 no.3, 2.

146 Chaim Perelman, *Retorica en Argumentatie* (Ambo: Baarn, 1979) 59 and 125-135. [first English edition: Chaim Perelman, *The Realm of Rhetoric,* (Notre Dame: University of Notre Dame Press, 1982).]

147 In Dutch: *'De Koning heeft het opperbestuur der buitenlandse betrekkingen. Hij bevordert de ontwikkeling der internationale rechtsorde.'*

148 In Dutch: *'Overeenkomsten met andere Mogendheden en met volkenrechtelijke organisaties worden door of met machtiging van de Koning gesloten, en voor zover de overeenkomst zulks eist, door de Koning bekrachtigd.'* In the eventual provision, a third subsection followed that stated that 'The judge does not interfere in judging the constitutionality of the agreements.' It shows a particularity of the Dutch constitutional system, important to keep in mind, in which constitutional interpretation was a matter allotted to parliament and not to a Constitutional Court.

149 Van Eysinga, *Eindrapport van de Commissie nopens de samenwerking*

tussen regering en Staten-Generaal inzake het buitenlands beleid, 15.

150 In Dutch: '*De goedkeuring wordt geacht te zijn verleend, indien niet binnen dertig dagen na het overleggen van de overeenkomst door of namens een der Kamer der Staten-Generaal de wens te kennen wordt gegeven, dat de overeenkomst aan de uitspraak van de Staten-Generaal zal worden onderworpen, of indien de beide Kamers der Staten-Generaal vóór de afloop van deze termijn verklaren dat geen uitspraak verlangd wordt.'*

151 In Dutch: '*De goedkeuring is niet vereist: a) indien het een overeenkomst betreft, waarvoor dit bij de wet is bepaald; b) indien de overeenkomst uitsluitend betreft de uitvoering van een goedgekeurde overeenkomst, voor zover de Staten-Generaal bij de goedkeuring geen voorbehoud ter zake hebben gemaakt; c) indien de overeenkomst geen belangrijke geldelijke verplichtingen aan het Koninkrijk oplegt en voor ten hoogste een jaar is gesloten; d) indien in buitengewone gevallen van dringende aard het belang van het Koninkrijk eist, dat de overeenkomst zonder verwijl van kracht wordt. Een overeenkomst als bedoeld in het vierde lid, onder d, wordt niet alsnog aan de goedkeuring van den Staten-Generaal onderworpen, indien binnen dertig dagen, nadat zij aan de Staten-Generala is overlegd, een der Kamers der Staten-Generaal de wens daartoe te kennen heeft gegeven. Indien de Staten-Generaal hun goedkeuring aan de overeenkomst onthouden wordt zij zo spoedig mogelijk beëindigd.*

152 HTK, 1951-1952, Bijlagen 2374.7.

153 Van Schaik, Eindrapport van de Staatscommissie, 187-8.

154 In Dutch: *'In het belang van de ontwikkeling van de internationale rechtsorde kan in een overeenkomst worden afgeweken van bepalingen van de Grondwet. In zodanig geval geschiedt de goedkeuring der overeenkomst niet dan door een uitspraak van de Staten-Generaal met twee derden der uitgebrachte stemmen in elk der Kamers.*' HTK, 1951-1952, Bijlage 2374.7.

155 See also the current procedure of constitutional reform in the Netherlands as laid down in chapter eight of *De Grondwet voor het Koninkrijk der Nederlanden*. It can be consulted via: www.st-ab.nl/wetgrondwet.htm. (last visited 31-03-2012).

156 HTK, 1951-1952, Bijlagen 2374.7.

157 S.n., 'Leading the Way' New York Times, 04.12.1952, 6.

158 Leonard Besselink, 'Internationaal recht en nationaal recht' in: Nathalie Horbach, René Lefeber, Olivier Ribbelink (eds.), *Handboek internationaal recht* (The Hague: T.M.C. Asser, 2007) 48-79, here 58. For an overview of the various national approaches to the European legal order see also Ton van den Brink, 'The relation between the European and the national legislatures from the perspective of constitutional integrity' in: Amtenbrink and Van den Berg (eds.), *The constitutional integrity of the European Union*, pp. 117-145, here pp. 131-136.

159 These typical traits of the political and constitutional culture of the Netherlands might also explain why Dutch historians seem to have systematically overlooked the interesting constitutional changes proposed in the early 1950s. Whereas the constitutional revisions of 1848, 1917 and 1983 have been given much academic attention, the constitutional reform of the early 1950s was left aside in their works. See, for instance, Henk te Velde, *De Grondwet van Nederland* (Amsterdam: Athenaeum-Polak & Van Gennep, 2006); Niek C.F.

van Sas, Henk te Velde, Marjan van Heteren, *De eeuw van de Grondwet: grondwet en politiek in Nederland 1798-1917* (Deventer: Kluwer, 1998); Jan H. Drentje, *Het vrijste volk ter wereld: Thorbecke, Nederland en Europa* (Zwolle: Waanders, 1998). An explanation might be that from a national constitutional perspective, the changes introduced by the government in the early 1950s did not introduce a break with old constitutional traditions. This view, however, underestimates their revolutionary character when compared in an international perspective.

160 In Dutch: *'Voor toetreding tot overeenkomsten vinden de bepalingen van de drie voorgaande artikelen overeenkomstig toepassing.*'

161 In Dutch: *'De overeenkomsten verbinden een ieder voor zover zij bekend zijn gemaakt. De wet geeft regels omtrent de bekendmaking van overeenkomsten'*

162 In Dutch: *'Aan volkenrechtelijke organisaties kunnen bij of krachtens een overeenkomst bevoegdheden tot wetgeving, bestuur en rechtspraak worden opgedragen.'* After this first provision of article 60(f), a second provision was proposed that stated that: 'Regarding resolutions of international organisations article 60[e] is correspondingly applicable.' Within the context of this research, however, this addendum is not very relevant. It must also be noted that in the reform procedure more changes to the constitution were presented than discussed here. In the context of this research the introduction of the provisions of Articles 58 and 60 are most relevant.

163 HTK, 1951-1952 (13-03-1952) 1879.

164 HEK, 1952-1953 (19-05-1953), 465.

165 HTK, 1951-1952 (13-03-1952), 1885-1886. The statement of Bruins Slot is found in ibid., 1882.

166 Ibid., 1885.

167 HEK, 1951-1952, (06-05-1952) 830.

168 NB: an amendment could not be made to the treaty itself, but only to the bill of approval.

169 HEK, 1952-1953 (19-05-1953) 465.

170 Ibid., 466. This analysis is confirmed by the analysis of the liberal MP Oud in HTK, 1951-1952 (13-03-1952), 1886.

171 HTK, 1951-1952 (14-03-1952) 1907.

172 HTK, 1951-1952 (13-03-1952) 1881.

173 In Dutch: 'het kladboek van Jantje'. This metaphor was used by Cor Geugjes see HEK, 1952-1953 (19-05-1953) 463.

174 For a reflection on the various functions of a constitution, including that of an 'ideological site, providing a specific structure to society and a justification for this structure designed to win the hearts and minds of the population, see Peter. A.J. van den Berg, 'The integrative function of constitutions: a historical perspective' in: Fabian Amtenbrink and Peter A.J. van den Berg (eds.), *The constitutional integrity of the European Union* (The Hague: T.M.C. Asser Press, 2010) pp. 13-53, here, pp. 13-18. See also: A. Hurrelmann, 'European Democracy, the "Permissive Consensus" and the collapse of the EU Constitution' *European Law Journal* 13 (2007) pp. 343-359, here pp. 344-345; J. Tully, *Strange multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: CUP, 1995) pp. 7-9, 58-60, 66-68; U. Baxi, 'Constitutionalism as a Site of State Formative Practices', *Cardozo Law Review* 21 (2000) pp.1183-1220.

175 VVD stands for *Volkspartij voor Vrijheid en Democratie.* In English: the Peoples Party for Freedom and Democracy.

176 HTK, 1951-1952 (07-05-1952) 849.

177 HTK, 1951-1952 (13-03-1952) 1894 and HTK, 1952-1953 (02-12-1952) 349.

178 HTK, 1951-1952 (14-03-1952) 1902.

179 HEK, 1952-1953 (19-05-1953) 466-7.

180 HEK, 1952-1953 (20-05-1953) 479.

181 HTK, 1951-1952 Bijlagen 2374.10 (05-03-1952) 27.

182 HTK, 1951-1952 (14-03-1952), 1909. But see also the contribution of Louis Beel to the meeting in the Upper House of 7 May 1952 HTK, 1951-1952 (07-05-1952) 856.

183 Ibid.

184 Ibid.

185 HTK, 1951-1952 (13-03-1952), 1890.

186 Perelman, The realm of rhetoric, 81-82.

187 Ibid., 82.

188 See for instance the comment of Jan Schmal, spokesman of the CHU: '[that] the constitution can be compared to a commercial building. It is not so much an aesthetic monument, but a construction deriving its meaning from the fact that it remains useful in practice.' HTK, 1951-1952 (13-03-1952), 1891.

189 HEK, 1951-1952, (06-05-1952), 819-20.

190 Ibid., 835-6.

191 HTK, 1952-1953 (02-12-1952) 346.

192 HTK, 1951-1952, (19-03-1952) 1957.

193 Ibid., 1951.

194 HTK, 1951-1952, (13-03-1952) 1890-1891.

195 HTK, 1951-1952, (19-03-1952) 1957. The earlier proposed articles 60 (d)(e) and (f) were hereafter renumbered (e),(f) and (g). Following the approval, the articles previously indicated with the numbers 60-60(g) were recorded in the Dutch constitution as the articles 60-67.

196 In the early 1950s, the SGP structurally held two seats in parliament.

197 Liberal MP Pieter Oud (VVD) in the parliamentary approval debate on the EEC Treaty, HTK, 1957-1958 (04-10-1957) 158.

198 For the historic details of this initiative Richard T. Griffiths, *Europe's first constitution: the European political community (1952-1954)* (London: Federal Trust, 2000).

199 Anjo G. Harryvan en Jan van der Harst, *Documents on European Union*, 27.

200 Anjo G. Harryvan, *In pursuit of influence. The Netherlands' European policy during the formative years of the European Union (1952-1973)* (Brussels: P.I.E. Peter Lang, 2009) 35 and further.

201 Harryvan, *In pursuit of influence,* 93.

202 It should be noted, however, that various elements brought up by the Netherlands also raised fierce resistance, see ibid., 93-97.

203 Preamble of the EDC Treaty. For the original (French) text of the treaty see: http://mjp.univ-perp.fr/europe/1952ced4.htm. (last visit 19-12-2012)

204 EDC Treaty, Article 1.

205 W.H. Weenink, *Johan Willem Beyen (1897-1976) Bankier van de wereld. Bouwer van Europa* (Amsterdam/ Rotterdam: Prometheus/NRC Handelsblad, 2005) 300-315.

206 HTK, Bijlagen 1952-1953, 2911. 3.

207 Ibid., p.2.

208 Ibid., 9.

209 Ibid., 1.

210 In 1944, the Netherlands, Belgium and Luxemburg had established a customs union – called the Benelux – in order to contribute to the mutual benefit of their national economies.

211 HTK, Bijlagen 1952-1953, 2911. 3, p.1.

212 For the exact percentages of seats taken in parliament see: www.parlement.com/9291000/ modulesf/gocfvphf. (last visit 11 April 2012).

213 See a.o.: G.J.N.M. Ruygers, *Eenheid in verscheidenheid,* (The Hague: NREB, 1953); Thijs Booij, *Ons groter vaderland Europa*, (Amsterdam: Ten Have, 1953); H.F. Panhuys, *The Netherlands Constitution and International Law*, in: *The American journal of international law* 47 (1953) pp. 537-558; H. Brugmans, *Toch ….. Europa!* (The Hague: Beweging van Europese Federalisten, 1954); André Voisin, *Tien jaren, 1947-1957*, (The Hague: Beweging van Europese Federalisten, 1957).

214 For more critical contributions to the intellectual debate in the 1950s see: J.G. van Putten, 'De verdeling van bevoegdheden in de Europese politieke gemeenschap' *Internationale Spectator*, 3 (1953), pp. 6-12; F.Doeleman, 'West-Europese eenheid' *Nederlands Juristenblad,* 13 (1954), pp. 270-272; J.L.F. van Essen, 'Welke vorm voor de Europese samenwerking' *Nederlands Juristenblad,* 17 (1954), pp. 357-359; W. Koops, *Federalisme: de Canadese variëteit* (The Hague: Nijhoff, 1955); P. Geyl, *Studies en strijdschriften: bundel aangeboden aan de schrijver bij zijn aftreden als hoogleraar aan de Rijksuniversiteit te Utrecht,* (Groningen: Wolters, 1958), pp. 469-478.

215 Article 60, subsection 2 contained that: 'The agreements are submitted to the States-General as soon as possible; they are not ratified and do not enter into force until after having been approved by the States-General.'

216 For the initial position of the government see HTK, Bijlagen 1952-1953, 2911, no's. 1 and 3. For the pressure of parliament to follow the procedure as laid down in Article 63, see HTK, Bijlagen 1952-1953, 2911, nr. 6, p.2-3.

217 HTK, Bijlagen 1952-1953, 2911.8, p. 3

218 HTK, Bijlagen 1952-1953, 2911. 6, p.3.

219 Ibid., p. 4.

220 For explicit references to the benefits of the EDC for a small country see also HTK, 1952-1953 (22-07-1953) 951 (Klompé); 955 (Korthals); and Beyen in HTK, 1952-1953 (23-07-1953) 1003.

221 HTK, Bijlagen 1952-1953, 2911. 6, p.4.

222 See, among others, HTK, 1952-1953 (22-07-1953) p. 951(Klompé), p. 953 (Bruins Slot), p.1000 (Ankersmit); HTK, 1952-1953 (23-07-1953) 1003 (Beyen).

223 HTK, 1952-1953 (22-07-1953) 967 and 970.

224 Ibid., 970.

225 HTK, Bijlagen 1952-1953, 2911. 6, 6. In the preliminary report the exact

identity and political preference of the MPs expressing this viewpoint is not revealed. Based on earlier parliamentary debates and the continuation of the EDC debate, however, it seems assumable beyond reasonable doubt that these words can be ascribed to CPN representatives. For words to the same effect see senator Geugjes (CPN) in HEK, 1953-1954 (19-01-1954) 127.

226 HTK, Bijlagen 1952-1953, 2911. 6, 6.

227 HTK, Bijlagen 1952-1953, 2911. 6, 6.

228 HEK, 1952-1953 (19-05-1953) 467. See also idem in HEK, 1953-1954 (19-01-1954) 131.

229 Article 87, subsection 2(a) of the EDC Treaty.

230 HEK, 1952-1953 (19-05-1953) 468. See also HTK, 1951-1952 (07-02-1952) 1456.

231 HTK, 1952-1953 (22-07-1953) 961.

232 Ibid. 996.

233 See Chapter I, p. 73.

234 HTK, 1952-1953 (22-07-1953) 995.

235 Ibid.

236 HTK, 1952-1953 (23-07-1953) 1005.

237 Ibid.

238 Ibid.

239 HTK, Bijlagen 1952-1953, 2911.6, 2. See also Hendrik Tilanus (CHU) in the parliamentary proceedings HTK, 1952-1953 (22-07-1953) 983.

240 HTK, 1952-1953 (22-07-1953) 951.

241 HTK, Bijlagen 1952-1953, 2911. 6, 7-8.

242 HTK, 1952-1953 (23-07-1953) 1020-1021.

243 HTK, Bijlagen 1952-1953, 2911.16. Apart from other members of the KVP, the motion was co-signed by prominent members of the ARP and VVD.

244 See the introduction of Marga Klompé of her amendment in HTK, 1952-1953 (22-07-1953) 951-952.

245 HTK, 1952-1953 (23-07-1953) 1023.

246 HTK, 1952-1953 (22-07-1953) 984.

247 See among others the contributions of Bruins Slot (ARP), Korthals (VVD) and Blaisse (KVP) to the debate: HTK, 1952-1953 (22-07-1953) 953, 955, 980.

248 HTK, 1952-1953 (23-07-1953) 1020.

249 Ibid., 1027.

250 Ibid.

251 HEK, 1953-1954 (20-01-1954) 199. The dissenting votes came from CPN, CHU and the PvdA.

252 For the differences in constitutional culture between so called 'dualist' systems and a monist system as existed in the Netherlands, see, for instance Leonard Besselink, 'Internationaal recht en nationaal recht' in: Nathalie Horbach, René Lefeber, Olivier Ribbelink (eds.), *Handboek internationaal recht* (The Hague: T.M.C. Asser, 2007) 48-79. For an overview of the various national approaches to the European legal order see also Ton van den Brink, 'The relation between the European and the national legislatures from the perspective of constitutional integrity' in: Amtenbrink and Van den Berg (eds.), *The constitutional integrity of the European Union*, pp. 117-145, here pp. 131-136.

253 See the Paris Agreements of 23 October 1954.

254 This report was called after its main designer, the Belgian Paul Henri Spaak.

255 See, among others, Antoine Vauchez, 'The Transnational Politics of Judicialization: Van Gend & Loos and the Making of EU Polity,' *European Law Journal* 16, nr. 1 (January 2010), 1-28 and Morten Rasmussen, 'The Origins of a Legal Revolution. The Early History of the European Court of Justice' *Journal of European Integration History*, vol. 14, no. 2 (2008), pp. 77-98.

256 It was generally understood that in case the small country of the Netherlands wanted to develop a policy in the field of nuclear energy, it needed to ally with other countries for financial and political reasons.

257 Due to the immense scope of the treaty it concerned practically all members of the government. Therefore also Minister of Social Affairs, Jacob Suurhoff (PvdA), and Jacob Algera (ARP), Minister of Transport and Public Works, took part in the debate.

258 HTK, 1956-1957, Bijlagen 4725.3.

259 Ibid., 3-4.

260 Ibid., 3.

261 Compare the preamble of the *Treaty establishing a European Economic Community* signed in Rome, 25 March 1957 with the explanatory memorandum on the Dutch Bill of Approval. The full text of the treaty is online available via: http://eurlex.europa.eu/en/treaties/index.htm (last visit 19-12-2012). For the explanatory memorandum see: HTK, Bijlagen 1956-1957 4725.3, p.5.

262 Ibid., 5.

263 Minister Luns, HTK, 1957-1958 (03-10-1957) 106.

264 HTK, Bijlagen 1956-1957 4725.3, 5-6.

265 Ibid., 6.

266 Ibid.

267 See Jan Bron Dik, *Christen-democraten en Europa: een onderzoek naar de houding van de ARP, de CHU en de KVP ten aanzien van de Europese samenwerking en eenwording, 1945-1980* (Groningen: Rijksuniversiteit Groningen, 1980).

268 For an analysis of Anti-Revolutionary thinking on Europe and, more specific, the Treaties of Rome see R.J. de Bruin, 'Cees Hazenbosch en de eeuwige beginselen van Gods Woord' in: G.J. Schutte, *Grenzeloos christelijk-sociaal:internationale activiteiten van de christelijk-sociale beweging* (Amsterdam/Utrecht: Aksant/CNV, 2009).

269 Actual disappointments halfway the fifties did not extinguish the idealistic flame within the Dutch intellectual discussion on Europe. Their only effect was a fanning of the idealists' fiery pleas.

270 References in the parliamentary debate to the protest of Dutch trade and industry are numerous. An extensive description of the complaints of various sectors can be found in the contribution to the debate of the Dutch senator Annie van Ommeren-Averink in HEK, 1957-1958 (03-12-1957) 72-74.

271 HTK, Bijlagen 1956-1957, 4725. 1.

272 In the case of the ECSC and the EDC, the Council of State had also advised the government. This was not discussed in the section on these treaties because the view of the Council did not add to the discussion as it took place between the government and parliament.

273 Council of State, *Advice of the Council of State on the approval of the Treaty Establishing a European Economic Community,* (18-06-1957), p. 2. The document was retrieved from the archive of the Ministry of Foreign Affairs in The Hague.

274 Ibid.

275 See Chapter I, p. 48.

276 *Nader Rapport in reaction to the Advice of the Council of State on the approval of the Treaty Establishing a European Economic Community* (2-07-1957), p. 3. The document was retrieved from the archive of the Ministry of Foreign Affairs in The Hague.

277 Ibid., p.4.

278 Ibid.

279 Minutes of the meeting of the Cabinet (01.07.1957), p.10. These minutes can be retrieved in the National Archives in The Hague.

280 Ibid.

281 In 1980 the *Wet Openbaarheid van Bestuur* (WoB) was introduced in the Netherlands. This Act on Public Government arranged that certain governmental documents were from then on made public.

282 The same held true for Euratom, but – as stated earlier – here the focus will solely be on the EEC debate.

283 HTK, Bijlagen 1956-1957, 4725. 9, 1.

284 See, among others, the speech of: Marinus van der Goes van Naters (PvdA), HTK, 1957-1958 (01-10-1957) 43; Cees Hazenbosch (ARP), ibid., 47; Gerard Nederhorst (PvdA), HTK, 1957-1958 (02-10-1957) 81; Barend Biesheuvel, Ibid., 87; Hendrik Kikkert (CHU), Ibid., 89; Wim Schuijt (KVP), Ibid., 93.

285 HTK, 1957-1958 (01-10-1957) 47.

286 Respectively HTK, 1957-1957 (02-10-1957) 97 and HTK, 1957-1958 (04-10-1957) 161.

287 HTK, Bijlagen 1957-1958 4725.9, p. 29.

288 See the speeches of Pieter Gebrandy (ARP), HTK, 19571-1958 (02-10-1957) 97 and Annie Van Ommeren-Averink (CPN), HEK, 19571-1958 (04-12-1957) 107.

289 For an enumeration of the dreaded economic consequences of the EEC Treaty see among others HTK, Bijlagen 1957-1958 4725.9, p. 11.

290 This is a literary quote of Herman van Leeuwen (VVD), HTK, 1957-1958 (02-10-1957) 72. For words to the same effect see Pieter Blaisse (KVP), HTK, 1957-1958 (01-10-1957) 25; Frederik van Dijk (VVD), Ibid., 37; Durk van der Mei (CHU), Ibid., 61.

291 Herman van Leeuwen (VVD), HTK, 1957-1958 (03-10-1957) 151.

292 HTK, 1957-1958 (02-10-1957) p.73.

293 Pieter Blaisse (KVP) in HTK, 1957-1958 (01-10-1957) 25; Henk Korthals (VVD) in ibid., 33; Cees Hazenbosch (ARP) in ibid., 47. Hendrik Kikkert (CHU) and Willem Rip (ARP) explicitly emphasised that the Netherlands was 'a *small* [italics added] and open national economy', see respectively HTK, 1957-1958 (02-10-1957) 87 and HEK, 1957-1958 (03-12-1957) 70.

294 Franz Lichtenauer, HEK, 1957-1958 (03-12-1957) 80 and Herman Hellema in ibid., 48.

295 P. Geyl, *Studies en strijdschriften : bundel aangeboden aan de schrijver*

bij zijn aftreden als hoogleraar aan de Rijksuniversiteit te Utrecht (Groningen: Wolters, 1958); P.Geyl, 'Historische achtergrond van de Europese eenheidsgedachte in:Pieter Geyl (ed.), *Vier maal Europa; acht colleges in het kader van het Studium generale der Rijksuniversiteit te Leiden* (s.l.: Samsom, 1959). See also J.Hollander, 'The Dutch intellectual debate on European integration' in: *Journal of European integration history* 17 2 (2011) 197-218, here 202-205.

296 Marcus Bakker in HTK, 1957-1958 (01-10-1957) 50-52.

297 See, among others, Pieter Zandt (SGP), HTK, 1957-1958 (01-10-1957) 65; Cees Hazenbosch (ARP), HTK, 1957-1958 (01-10-1957) 44; Martinus Janssen (KVP), HTK, 1957-1958 (02-10-1957) 98; Herman van Leeuwen, HTK, 1957-1958 (02-10-1957) 73.

298 Pieter Gerbrandy HTK, 1957-1958 (02-10-1957) 97; Pieter Zandt (SGP) HTK, 1957-1958 (01-10-1957) 54.

299 HTK, 1957-1958 (02-10-1957) 97.

300 Anton van Duinkerken, 'Nieuw-Nederlandsch lied' in: M.G. Schenk and H.M. Mos (eds.), *Geuzenliedboek 1940-1945* (Amsterdam: Buijten & Schipperheijn, 1975), 11-12.

301 Minister of Transport and Public Works Jacob Algera (ARP) in HTK, 1957-1958 (03-10-1957) 130.

302 Ibid. 113.

303 HEK, 1957-1958 (04-12-1957) 97.

304 Ibid.

305 HTK, 1957-1958 (02-10-1957) 101. In earlier debates, the leader of the KNP Charles Welter had positioned himself as a fierce critic of European integration. After the dissolution of the KNP in 1955, however, in May 1956, he returned to the KVP and changed his tune in European affairs. See also Hendrik Kikkert (CHU) in ibid., 89.

306 HTK, 1957-1958 (02-10-1957) 101.

307 Ibid, 87.

308 Ibid., 102. See also Willem Rip (ARP) in HEK, 1957-1958 (03-12-1957) 70 and Geert de Grooth in ibid., 83.

309 HTK, 1957-1958 (01-10-1957), 63.

310 HEK, 1957-1958 (03-12-1957) 50. See also Gerrit Vixseboxse in ibid., 54.

311 HTK, 1957-1958 (04-10-1957) 161.

312 HTK, 1957-1958 (01-10-1957), 68.

313 HTK, 1957-1958 (03-10-1957) 113.

314 HTK, 1956-1957, Bijlagen 4725 no. 9, 4.

315 Ibid., 4-5.

316 Gerard Nederhorst (PvdA), HTK, 1957-1958 (02-10-1957) 74; Marcus Bakker (CPN), HTK, 1957-1958 (01-10-1957) 64; Pieter Zandt (SGP), ibid., 53.

317 See a.o. Henk Korthals (VVD) in HTK, 1957-1958 (01-10-1957) 31. For the defence of the government on the course of affairs, see a.o., Minister Luns, HTK, 1957-1958 (03-10-1957) 107-108.

318 HTK, 1957-1958 (02-10-1957) 97.

319 HTK, 1957-1958 (04-10-1957) 157 and 162.

320 Ibid., 157.

321 HEK, 1957-1958 (03-12-1957), 82.

322 HTK, 1957-1958 (02-10-1957) 96-97.

323 HEK, 1957-1958 (03-12-1957), 54.

324 HTK, 1957-1958 (04-10-1957) 157.

325 In 1956 it was decided to constitutionally distinguish – in a new Article 65 – between treaty provisions that had direct effect and those that had not. This in order to prevent the supremacy of international treaties that had never been intended to have supremacy in a national context. For the details of this constitutional revision see, for instance, Monica Claes, *The national courts' mandate in the European constitution* (Oxford: Hart publishing, 2006) 48-50.

326 HTK, Bijlagen 1956-1957 4725.14, 8.

327 HTK, 1957-1958 (04-10-1957) 158.

328 HTK, 1957-1958 (04-10-1957), 162.

329 Ibid., 158.

330 Ibid., 163.

331 HTK, 1957-1958 (03-10-1957) 107.

332 HTK, 1957-1958 (03-10-1957) 147 and idem in HTK, 1957-1958 (04-10-1957) 173.

333 Van der Goes van Naters Serrarens in HTK, 1957-1958 (03-10-1957) 147.

334 Not a single MP, except for Gerbrandy saw in this particular argument the reason for rejecting the treaty.

335 HTK, Bijlagen 1956-1957 4725.21.

336 Pieter Blaisse, HTK, 1957-1958 (01-10-1957) 30.

337 HTK, 1957-1958 (04-10-1957) 160-161.

338 HTK, 1957-1958 (03-10-1957) 139-140.

339 HTK, 1957-1958 (04-10-1957) 166.

340 HTK, 1957-1958 (03-10-1957) 160-161.

341 HTK, 1957-1958 (04-10-1957) 173.

342 Pieter Blaisse in HTK, 1957-1958 (03-10-1957) 143-144 and Pieter Oud in HTK, 1957-1958 (03-10-1957) 158.

343 HEK, 1957-1958 (04-12-1957) 112.

344 One MP of thirteen in total.

345 Former Minister of Foreign Affairs Bernard Bot in an interview with the author on 24 April 2009.

346 Robert Frost, 'The Road not Taken' in: *Mountain Interval* (1920).

347 Antoine Vauchez, 'The Transnational Politics of Judicialization: Van Gend & Loos and the Making of EU Polity,' *European Law Journal* 16, nr. 1 (January 2010), 1-28, there 9-10.

348 Out of the first 18 requests for preliminary rulings, referred to the ECJ between 1958 and 1964, 15 were of Dutch origin, see Vauchez, 'The Transnational Politics of Judicialization: Van Gend & Loos and the Making of EU Polity,' footnote 36.

349 Case 26/62 *NV Algemene Transporten Expeditie Onderneming Van Gend & Loos v. Nederlandse Administratie der Belastingen* [1963] ECR 1. Article 12 of the EEC Treaty stated that: 'Member States shall refrain from introducing, as between themselves, any new customs duties on importation or exportation or charges with equivalent effect and from increasing such duties or charges as they apply in their commercial relations with each other.'

350 Ibid., Arguments and Observations, II A.

351 Ibid., Arguments and Observations II A; Luuk van Middelaar, *De Passage naar Europa,* 79.

352 Van Middelaar, *De Passage naar Europa*, 79.

353 Monica Claes, *The national courts' mandate in the European constitution*, 75.

354 Monica Claes and Bruno de Witte have argued that the Dutch constitutional revision provided a 'major source of inspiration' for the ECJ judges in these doctrinal decisions of the European Court of Justice (ECJ). Monica Claes and Bruno de Witte, 'Report on the Netherlands', in: Anne-Marie Slaughter, Alec Stone Sweet en J.H.H. Weiler (eds), *The European court and national courts: doctrine and jurisprudence. Legal change in its social context*, (Oxford: Hart, 1998), pp. 171-194, here171. For the considerations of the Court see section Grounds of Judgement, II A of the verdict. The ruling on the Van Gend en Loos case came about with a narrow majority of four against three. It was favoured by four judges – Trabucchi, Lecourt, Rino Rossi and Louis Delvaux, while three judges – André Donner, Otto Riese and Leon Hammers – opposed it. See Morten Rasmussen, 'Constructing and Deconstructing 'Constitutional' European Law. Some reflections on how to study the history of European law' in: Henning Koch, Karsten Hagel-Sørensen, Ulrich Haltern & Joseph H.H. Weiler (eds.), *Europe. The new legal realism* (Århus: Djøf Publishing, 2010) footnote 40.

355 Van Middelaar, *De passage naar Europa*, 80.

356 Ibid., 81.

357 Morten Rasmussen, 'The Origins of a Legal Revolution. The Early History of the European Court of Justice' *Journal of European Integration History*, vol. 14, no. 2 (2008), pp. 77-98, there 95.

358 Van Middelaar, *De passage naar Europa*, 82

359 Ibid.

360 Erik Jurgens in an interview with the author on 13 April 2011.

361 Case 6/64 Flaminio Costa v ENEL [1964] ECR 585.

362 For a recent study on the life and work of Sicco Mansholt see J.C.F.J. Merrienboer, *Mansholt: een biografie* (Amsterdam: Boom, 2006).

363 Charles de Gaulle in a press conference of 15 May 1962, for both the audio-visual fragment and the transcription see: www.ina.fr/fresques/jalons/fiche-media/InaEdu00096/conference-de-presse-du-general-de-gaulle-du-15-mai-1962.html (last visit 19-12-2012).

364 Bernard Bot in an interview with the author on 24 April 2009.

365 Jos Kapteyn in an interview with the author on 15 January 2010.

366 For the full text of the Luxembourg Compromise see *Bulletin of the European Communities*, March 1966, 3-66, there 5-11or www.eurotreaties.com/luxembourg.pdf (last visit 19-12-2012).

367 Ibid., 6.

368 These identical articles stated explicitly that 'any European state may apply to become a member of the Community.'

369 The (English) transcription of the press conference can be found via the Archive of European Integration of the University of Pittsburgh: http://aei.pitt.edu/5777/1/5777.pdf. (last visit 19-12-2012). See page 86.

370 The term 'instrumental supranationalism' is extracted from the work of the Dutch historian Anjo Harryvan, see Harryvan, *In pursuit of influence*, 165.

371 HTK, Bijlagen 1959-1960, 5710.2.

372 HTK, 1959-1960, (04-07-1960). See, e.g., the contributions to the debate of Pieter Blaisse (KVP), p. 1149; Barend Biesheuvel (ARP), p. 1155; Marinus van der Goes van Naters (PvdA), p.1159; Ivo Samkalden (PvdA), p. 1167.

373 An English version of the Treaty is available in: *Treaties establishing the European Communities. Treaties amending these Treaties. Single European Act: resolutions and declarations. I* (Luxembourg: Office for Official Publications of the European Communities, 1987) 823-880.

374 Finn Laursen, 'The Merger Treaty 1965: The First Reform of the Founding European Community Treaties' (working paper prepared for Conference *From Paris to Lisbon: EU Treaties and their Reforms,* Dalhousie University, Halifax, Canada, 22-23 March 2010) 11. The working paper can be found on: http://euce.dal.ca/Files/The_Merger_Treaty_1965_by_Finn_Laursen.pdf (last visit 19-12-2012).

375 In this division, the larger states could still claim two Commissioners, whereas the smaller states would keep only one.

376 Laursen, 'The Merger Treaty 1965', 11-12.

377 Less than a week after the signing of the Merger Treaty, on 14 April 1965, the Cals cabinet succeeded the De Quay government.

378 HTK, Bijlagen 1965-1966, 8380 (R506).3, 4.

379 Ibid.

380 Ibid., 5.

381 With the resignation of the MP Pieter Gerbrandy in 1959 and his death in 1961, the ARP had lost a prominent critic of European integration. It resulted in a more united pro-European stance of the ARP, than in the previous years.

382 See, for instance, the 1963 electoral manifesto of the KVP that stated that the desired end goal of the integration process was the realisation of 'the United States of Europe with a federal government.' It can be downloaded via: http://dnpp.eldoc.ub.rug.nl/FILES/root/programmas/vp-per-partij/kvp/kvp.pdf (last visit 19-12-2012). See also Gerrit Voerman, 'De Nederlandse politieke partijen en de Europese integratie' in: Kees Aarts en Henk van der Kolk (eds.), *Nederlanders en -Europa: het referendum over de Europese grondwet* (Amsterdam: Bakker, 2005) 44-63, here 51-52.

383 Voerman, 'De Nederlandse politieke partijen en de Europese integratie', 49.

384 Ibid., 50.

385 The Merger Treaty was not received as such because it did not substantially add to what had been agreed already.

386 J. Hollander, 'The Dutch intellectual debate on European integration' in: *Journal of European integration history* 17 2 (2011) 197-218, here 203-207.

387 The CPN did not speak in the meetings on the Merger Treaty.

388 Cees Berkhouwer (VVD) in HTK, 1965-1966 (21-06-1966) 2046 and Jaap Burger (PvdA) in HEK, 1966-1967 (25-10-1966) 32.

389 In various contributions to the debates in the Upper and Lower House such

questions were asked. See both HTK, 1965-1966 (21-06-1966) and HEK, 1966-1967 (25-10-1966).

390 Joseph Luns in HEK, 1966-1967 (25-10-1966), 43.

391 HTK, Bijlagen 1965-1966, 8380.9.

392 HTK, 1965-1966 (21-06 1966) 2050 and HTK, Bijlagen 1965-1966, 8380 (R506). 6, 2.

393 Herman Posthumus Meyjes in an interview with the author on 29 Mach 2010.

394 Jos Kapteyn in an interview with the author on 15 January 2010.

395 Shortly following his resignation, Charles de Gaulle died on 9 November 1970.

396 The following observation is telling with regard to the view of Pompidou regarding Europe: L'Europe, c'ést un marriage entre Etats…Mais l'amour n'en est pas à la base' cited by Stéphane Rials in *Les idées politiques du Président Georges Pompidou* p. 135.

397 For more on the Luxembourg Compromise, see p. 84 and/or: *Bulletin of the European Communities*, March 1966, 3-66, there 5-110r www.eurotreaties.com/luxembourg.pdf (last visit 19-12-2012).

398 See the discussion on the summit in HTK, 1968-1969 (09-09-1969).

399 D'66, established in 1966, was a typical product of 'depillarisation' [in Dutch: *ontzuiling*] i.e. the process of the removal of traditional religious and socio-political barriers in the Netherlands in the 1960s and 1970s. The party supported the process of European integration on principle, but emphasised in particular the need for democratisation of the European institutions via supranationalisation and the accession of new Member States.

400 Hans van Mierlo (D'66) in HTK, 1968-1969 (09-09-1969) 3717.

401 Ibid.

402 See the report of the government on the conference in the Hague HTK, Bijlagen 1969-1970, 10448, 3. For the reaction of parliament, see: HTK, 1969-1970 (23-12-1969). At the summit of 1969 also the first concrete ideas for European monetary integration came up. They would lead to the establishment of a European Monetary System in 1979 and eventually to the realisation of a European Monetary Union with the Treaty of Maastricht (1992). The debates in the Netherlands on European monetary integration will be discussed in Chapter 5, in the section on the Treaty of Maastricht.

403 The text of the treaty was published in Official Journal L 73 (27 March 1972). It can also be consulted via: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1973:002:FULL:EN:PDF. (last visit 19-12-2012)

404 See the fourth and fifth provisions in the preamble of treaty.

405 HTK, Bijlagen 1971-1972, 11872. 1.

406 HTK, Bijlagen 1971-1972, 11872. 2 (Artikel 2).

407 Under influence of the innovative movement 'Nieuw Links' (New Left), in the second half of the 1960s a radical line had been introduced within the PvdA, leading to internal polarisation on issues such as democratic renewal in both the party and society as a whole.

408 Hans Doel, *Tien over rood: uitdaging van Nieuw Links aan de PvdA*

(Amsterdam: Polak & Van Gennep, 1966); D.F.J. Bosscher, 'De Partij van de Arbeid en het buitenlands beleid (1945-1974) in: Thomas von der Dunk, *Alleen op de wereld: de Nederlandse worsteling met zichzelf, God en Europa* (Amsterdam: Van Gennep, 2001), 63-83.; Gerrit Voerman, 'De Nederlandse politieke partijen en de Europese integratie' in: Aarts en Kolk (eds.), *Nederlanders en Europa*, 44-63.

409 Norbert Schmelzer, *Herinneringen van een politiek dier* (Amsterdam: Balans, 2004), 51.

410 Former Director-General of European Cooperation of the Dutch Ministry of Foreign Affairs Herman Posthumus Meyjes in an interview with the author on 29 March 2010.

411 HTK, Bijlagen 1971-1972, 11872.3, 4.

412 Ibid.

413 Ibid.

414 HTK, 1971-1972 (14-09-1972) 4302.

415 HTK, Bijlagen 1971-1972, 11872.3, 4.

416 HTK, 1968-1969 (09-09-1969) 3737. For the origin of the quote see: J.G. Fichte, *Der geschlossene Handelsstaat* (Leipzig: s.n., 1800).

417 Former Director-General of European Cooperation of the Dutch Ministry of Foreign Affairs Herman Posthumus Meyjes in an interview with the author on 29 March 2010.

418 HTK, Bijlagen 1971-1972, 11872.3, 5.

419 The initial members of the EFTA were Denmark, Sweden, Norway, Switzerland, Austria, Portugal and the United Kingdom.

420 HTK, Bijlagen 1971-1972, 11872.3, 5.

421 Ibid.

422 HTK, Bijlagen 1971-1972, 11872.3, 4.

423 P. Geyl, 'Historische achtergrond van de Europese eenheidsgedachte' in: idem (ed.), *Vier maal Europa,* 23.

424 In 1971-1972 the political antagonists of European integration received support from the *Nederlandse Middenstands Partij* (NMP, the Dutch Party of Trades people) that occupied two seats in the Lower House. This party was led by Albert te Pas, who had run a wholesale business in paintings. The NMP, however, hardly had any influence in the Lower House and was soon destroyed by internal fights.

425 HTK, Bijlagen 1971-1972, 11872.4, 1.

426 HTK, 1971-1972 (13-09-1972) 4264 and 4274. Corstiaan Bos (CHU) had been designated as to speak also on behalf of the KVP and ARP.

427 HTK, 1971-1972 (13-09-1972), 4258. See for words of similar meaning Hendrik Jan Louwes HEK, 1972 (14-11-1972) 223.

428 HEK, 1967 (11-07-1967) 303.

429 Ibid.

430 HTK, 1968-1969 (09-09-1969) 3733.

431 See, e.g., HTK, 1971-1972 (01-12-1971) 1500. The UK, the Dutch government argued, would eventually feel bound to the *acquis communautaire* once the country had signed the Treaties of Rome and thus its hesitant stance towards further supranationalisation would disappear once the country had acceded.

432 See James G. March and Herbert A. Simon, *Organizations* (s.l.: Wiley 1958) 165: 'Uncertainty absorption takes place when inferences are drawn from a body of evidence and the

inferences, instead of the evidence itself, are then communicated.'

433 See the comments of MP Corstiaan Bos (CHU) on HTK, 1968-1969 (09-09-1969) 3728.

434 This monetary crisis of the early 1970s was the result of fundamental imbalances in the Bretton-Woods system. A drop in the value of the American Dollar led to fluctuations in the stability of the European currencies.

435 HTK, Bijlagen 1971-1972, 11872.4, 1-2.

436 The 'no demos thesis' states that democratic legitimacy cannot be provided at the European level since there is no European *demos* (people) and no European public sphere. Dieter Grimm was the first to raise this issue, see Dieter Grimm, 'Does Europe Need a Constitution?' (1995) 1 3 *European Law Journal,* 282-302.

437 Bart Verbrugh (GPV) HTK, 1971-1972 (13-09-1972) 4267-4269.

438 Ibid. 4267.

439 Bart Verbrugh (GPV) HTK, 1971-1972 (13-09-1972) 4268. For a similar remark of the SGP see Cornelis van Dis (SGP) HTK, 1969-1970 (23-12-1969) 1769.

440 See for instance Minister of Foreign Affairs Norbert Schmelzer and State Secretary of European Affairs Tjerk Westerterp (KVP) in HTK, 1971-1972 (01-12-1971) 1485 and 1499.

441 The metaphor of the motor was, for instance, used in the explanatory memorandum on the bill of approval on the accession of the new Member States. The European Commission was presented here as the 'motor' that would bring European integration further. See: HTK, Bijlagen 1971-1972, 11872.3, 4.

442 HTK, 1971-1972 (13-09-1972) 4267.

443 Ibid. 4279.

444 Ibid.

445 HTK, 1969-1970 (23-12-1969) 1769 and HEK, 1972 (14-11-1972) 224.

446 HTK, Bijlagen 1971-1972, 11872.5, 1.

447 Ibid.

448 HTK, Bijlagen 1971-1972, 11872.5, .2.

449 HTK, 1971-1972 (14-09-1972) 4307.

450 Ibid. 4302.

451 Ibid., 4318.

452 Ibid., 4317.

453 HTK, Bijlagen 1971-1972, 11872.5, 2.

454 See, for instance, the reaction of Hendrik Jan Louwes (VVD) in HEK, (14-11-1972) 223.

455 Article 138, subsection 3, first sentence: 'The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States.'

456 Article 138, subsection 3, second sentence.

457 Van Middelaar, *De passage naar Europa,* 384.

458 Ibid., 384. Following the observation of Luuk van Middelaar, 'fact and norm were mixed up' in the French criticism.

459 Ibid., 45.

460 In May 1973, his cabinet, which consisted of members of the KVP, ARP, PPR and D'66 had succeeded the second Biesheuvel cabinet and would stay on until December 1977.

461 The full text of the Act can be found in the Official Journal L278/5 (08-10-1976).

462 See Article 5 of the Act and the interpretation of the article of the government of the Netherlands in HTK, Bijlagen 1976-1977, 14383.3, 11-12.

463 Ibid., 4 and 5.

464 HTK, Bijlagen 1976-1977, 14383.3, 4

465 Hollander, 'The Dutch intellectual debate on European integration' in: Journal of European integration history 17 2 (2011) 197-218, here 203-210.

466 Ibid., 209.

467 HTK, Bijlagen 1971-1972, 11872.17, 2.

468 Cees Berkhouwer (VVD) HOCV, 1976-1977 (21-03-1977) 659 and 686; and HTK, 1977 (22-06-1977) 123; Piet van der Sanden (KVP) HTK, 1977 (22-06-1977) 127.

469 HTK, 1971-1972 (13-09-1972) 4266.

470 HTK, 1968-1969 (09-09-1969) 3712. For words of identical import see also Cees Berkhouwer (VVD), HTK, 1971-1972 (13-09-1972) 4260. For the comment on European passports see Cees Berkhouwer (VVD), HOCV, 1975-1976 (22-03-1976) 681.

471 Piet van der Sanden (KVP), here also spokesperson on behalf of the ARP and CHU, in HOCV, 1976-1977 (21-03-1977) 665.

472 Many of the comments with regard to the practical details of direct elections for the EP were uttered after the elections had been approved in principle. See, e.d., HTK, 1977-1978 (29/31-08-1978); HTK, 1977-1978 (05-09-1978); HEK, 1978-1979 (12-12-1978); HTK, 1978-1979 (14-05-1979)

473 HTK, 1977-1978 (29-08-1978) 3205.

474 Van der Jagt (GPV) in HEK, 1978-1979 (12-12-1978) 204.

475 Handelingen Openbare Commissie Vergadering (HOCV, Minutes of Public Committee Meeting), 1976-1977 (21-03-1977) 662. For words to the same effect see: HTK, 1977 (22-06-1977) 129-130.

476 HOCV, 1976-1977 (21-03-1977) 662.

477 HTK, 1977 (22-06-1977) 129-30 and HEK, 1977 (28-06-1977) 32.

478 HTK, 1977 (22-06-1977) 130.

479 HOCV, 1976-1977 (21-03-1977) 681 and HTK, 1977 (22-06-1977) 135.

480 HOCV, 1976-1977 (21-03-1977) 688. For words of similar meaning see Kees IJmkers (CPN) HEK, 1977 (28-06-1977) 28 and Koert Meuleman (SGP) in ibid., 29.

481 HOCV, 1976-1977 (21-03-1977), 693.

482 Ibid., 673. See also ibid., 681.

483 HOCV, 1976-1977 (21-03-1977) 680.

484 Ibid.

485 Ibid. For words of identical import see: HEK, 1977 (28-06-1977) 32.

486 HOCV, 1976-1977 (21-03-1977), 681.

487 Ibid., 672-673.

488 Ibid.

489 HTK, 1971-1972 (14-09-1972) 4302.

490 It can be argued that, in fact, for ages already the Dutch political majority did not seem to have had a strong trust in the *de facto* sovereignty of the Netherlands, hence the tradition of

seeking for expedient international partnerships. However, the *de jure* dropping of state sovereignty in the process of European integration was a considerable step further.

491 The quote stems from an internal memo, written by the Director-General of European Cooperation of the Dutch Ministry of Foreign Affairs Herman Posthumus Meyjes to his chief of the Directorate of European Affairs.Memo no. 4/79 dd. 16.01.1979, personal archive of Herman Posthumus Meyjes.

492 One example was the appointment of the Chairman of the Lower House.

493 Other human rights agreements and treaties to which the Netherlands had become a party in the post-1945 era, were the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social, Cultural Rights (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1966), Convention For The Elimination Of All Forms Of Discrimination Against Women (1979). For the complete list see: www.minbuza.nl/producten-en-diensten/verdragen/mensenrechtenverdragen.html (last visit 19-12-2012).

494 See HTK, 1975-1976, 13872.3, p.12 and T. Barkhuysen, M.L. van Emmerik and J.P. Loof, '50 jaar EVRM en het Nederlandse staats- en bestuursrecht – ontwikkelingen en vooruitzichten' in R. Lawson and E. Myjer (eds.), *50 jaar EVRM. Rechten van de mens 1950-2000* (Leiden: Stichting NCJM-boekerij, 2000) 327-408, here 332.

495 For the changes in this chapter as proposed by the Dutch government see: HTK, Bijlagen 1979-1980 15049 (R1100), 1. Relevant to mention here is the editorial revision and renumbering of Articles 60-67. The core of these arguments was rewritten into articles 90-95. Article 90, subsection 1 and Article 90, subsection 3 provided henceforth, respectively, for a procedure of approval for treaties (not) deviating from the Dutch constitution. Article 67 that had stated that organisations under international law could by, or by virtue of an agreement be assigned powers of legislation, administration and jurisdiction, was now couched in Article 92.

496 CDA stands for *Christen Democratisch Appel*. For the motion see HTK, Bijlagen 1979-1980 15049 (R1100) 16.

497 HTK, Bijlagen 1979-1980 15049 (R1100) 6, 3.

498 HTK, Bijlagen 1979-1980 15049 (R1100) 9, 2.

499 HTK, Bijlagen 1979-1980 15049 (R1100) no. 16 and HTK, 1979-1980, (18-03-1980) 3909.

500 HTK, Bijlagen 1979-1980 15049 (R1100) 10, 1.

501 HTK, 1979-1980, (25-03-1980) 4080.

502 Ibid.

503 Ibid.

504 See, for instance, Van den Broek (CDA) HTK, 1979-1980, (23-04-1980) 4431.

505 HTK, Bijlagen 1979-1980, 15049 (R1100) no. 16.

506 See the various approval procedures of European treaties, as discussed in continuation of this study, and, see also: M.L. van Emmerik, 'De Nederlandse grondwet in een veellagige rechtsorde' in: *Rechtsgeleerd Magazijn THEMIS* 4 (2008) 145-161.

507 In reaction to the development of medium-range missiles by Russia and the invasion of this Communist superpower in Afghanistan (1979), the US provided the latter country with material support and NATO decided to station cruise missiles in Western-Europe.

508 Daniel R. Brower, *The world since 1945. A brief history* (New Jersey: Prentice Hall inc., 2000) 214. The oil crisis ensued from the Iranian revolution (1979) and the Iran-Iraq war that broke out in its aftermath (1980). See ibid., 230.

509 P. van de Meerssche, *Van Jalta tot Malta: politieke geschiedenis van Europa* (Utrecht: Het Spectrum, 1990), 194.

510 M. Albert and R.J. Ball, *Towards European economic recovery in the 1980s; report presented to the European Parliament*, European Parliament Working Documents 1983-1984 (31 August 1983).

511 Meerssche, *Van Jalta tot Malta*, 195.

512 Between 1967 and 1974, Greece was ruled by a military government, led by the dictator Dimitrios Ioannidis. After the death of general Francisco Franco in 1975, Spain entered a period of democratic reform led by the grandson of the last Spanish King, Juan Carlos. In Portugal, the revolution of 1974 brought the end to an era of military dictatorship. For the history of the individual transition processes see, respectively: Speros Vryonis, *Greece on the road to democracy: from the Junta to PASOK, 1974-1986* (New Rochelle, N.Y.: Caratzas, 1991); Laura Desfor Edles, *Symbol and ritual in the new Spain: the transition to democracy after Franco* (Cambridge: Cambridge U.P., 1998); Howard J. Wiarda, *The transition to democracy in Spain and Portugal* (Washington D.C.: American Enterprise Institute for Public Policy Research, 1989); Ronald H. Chilcote, *The Portuguese revolution: state and class in the transition to democracy* (Lanham: Rowman & Littlefield Publishers, 2010).

513 Think, for instance, of the rise of Solidarność in Poland.

514 On 27 October 1970, in Luxembourg, the Foreign Ministers of the Six subscribed to the Davignon Report, which sought progress in the area of political unification through cooperation in foreign policy matters. *Bulletin of the European Communities*. November 1970, no. 11. (Luxembourg: Office for Official Publications of the European Communities.)

515 Original source of the respective Treaties: Official Journal L 291 of 19 November 1979 (Greece) Official Journal L 302 of 15 November 1985 (Spain/Portugal).

516 See the first provision in the preambles of both treaties.

517 The accession treaty for Spain and Portugal was signed after the 1983 reform of the Dutch constitution. See HTK, Bijlagen 1979-1980, 16090.2 and HTK, Bijlagen 1984-1985, 19122.2. See also footnote 495

518 Council of State advice on the Act of Approval Concerning the Accession of the Hellenic Republic to the European Communities and Euratom (13 February 1980). This advice can be consulted through the archives of the Dutch Ministry of Foreign Affairs, file DVE/NA/03281. See also: HTK, 1984-1985, 19122. A-C, here B. Important to note: Since Dutch law on the publicity of the national administration had changed in 1981 (introduction of the *Wet Openbaarheid Bestuur* [WOB]), the Council of State's reports became open to the public. This signified that

the Dutch parliament had been able to inform itself on its opinion before the parliamentary debate on approval of Spanish and Portuguese accession commenced.

519 HTK, Bijlagen 1984-1985, 19122.3, 5.

520 HTK, Bijlagen 1984-1985, 19122.3, 4.

521 HTK, Bijlagen 1979-1980, 16090.3, 4 and HTK, Bijlagen 1984-1985, 19122.3, 4.

522 HTK, Bijlagen 1979-1980, 16090.3, 4.

523 HTK, Bijlagen 1979-1980, 16090.3, 3-4 For the original source of the comment see: HTK, Bijlagen 1971-1972, 11872.3, 4.

524 HTK, Bijlagen 1979-1980, 16090.3, p. 3-4 and HTK, Bijlagen 1984-1985, 19122.3, 4

525 HTK, Bijlagen 1979-1980, 16090.3, 4.

526 Perelman, The realm of rhetoric, 81-82.

527 In the Upper House these percentages were respectively 53,3% and 57,3%.

528 J.L. Heldring, *Dezer jaren: buitenlands beleid & internationale werkelijkheid* (Baarn: In den Toren, 1982), 16; J.L. Heldring, *Het verschil met anderen* (Amsterdam: Van Oorschot, 1975). See also Hollander, The Dutch Intellectual Debate on European Integration (1948-present). On Teachings and Life, in: *Journal of European integration history* 17 2 (2011) pp. 197-218, here 207-210.

529 Sociaal Economische Raad (SER), *Advies inzake de verzoeken om toetreding tot de Europese Gemeenschap van Griekenland, Portugal en Spanje* (The Hague: SER, 1977); Council of State advice on the Act of Approval Concerning the Accession of the Hellenic Republic to the European Communities and Euratom (13 February 1980), 1-2 and See also: HTK, 1984-1985, 19122. A-C, here B, 6.

530 L.J. Brinkhorst, *Nederland in de Europese Gemeenschap: terugblik en vooruitzicht, in: P.M. Hommes, Nederland en de Europese eenwording* (Den Haag; Nijhoff, 1980), pp.200-218, here 205.

531 Since the Dutch people were never closely involved in the process, the extent to which it had supported earlier steps is hard to measure, apart from the reactions of Dutch public intellectuals.

532 HEK, 1977-1978 (16-05-1978) 268.

533 See Frans Weisglas (VVD) HTK, 1985-1986 (29-10-1985) 871.

534 HEK, 1977-1978 (16-05-1978), 270.

535 HTK, Bijlagen 1979-1980, 16090.4, 2-3.

536 HTK, Bijlagen 1979-1980, 19122.4, and 5.

537 Ibid, 4.

538 HTK, Bijlagen 1979-1980, 16090.4, 3-5 and HTK, Bijlagen 1984-1985, 19122.4, 4-5.

539 HTK, 1976-1977 (28-10-1976) 821.

540 See, for example, the words of Schelto Patijn (PvdA) in HOCV, 1976-1977 (22-08-1977) 9.

541 Jaap de Zwaan in an interview with the author on 28 March 2011.

542 The European Commission on Human Rights was an anteroom of the European Court of Human Rights until 1998.

543 See the comments of Schelto Patijn (PvdA) in HOCV, 1979-1980 (29-04-1980) 1748; and Hans Oskamp (PvdA) in HEK, 1979-1980 (10-06-1980) 924.

544 Hans Oskamp (PvdA) in HEK, 1979-1980 (10-06-1980) 924.

545 HOCV, 1979-1980 (29-04-1980) 1755.

546 Bart Verbrugh, HOCV, 1979-1980 (29-04-1980) 1752.

547 See, among others, Hans Oskamp (PvdA), HEK, 1979-1980 (10-06-1980) 922; Louwes (VVD) in HEK, 1977-1978 (16-05-1978), 268; Van der Linden (CDA) in HUCV, 1977-1978 (28-08-1978) 845.

548 Laurens Jan Brinkhorst (D'66) in HOCV, 1979-1980 (29-04-1980) 1749.

549 HTK, Bijlagen 1984-1985, 19122.4, p.19.

550 See, among others, Frans Weisglas (VVD) HTK, 1985-1986 (29-10-1985) 872; René van der Linden (CDA), ibid., 876.

551 Frans Weisglas (VVD) in HTK, 1985-1986 (29-10-1985) 897.

552 A fierce political strife between liberal and Christian politicians of more than hundred years on education – the *Schoolstrijd* – had preceded the insertion of this article in the Dutch constitution in 1917.

553 HTK, 1985-1986 (29-10-1985) 878.

554 Ibid., 875.

555 Ibid., 892.

556 Ibid., 880.

557 HEK, 1979-1980 (10-06-1980) 924.

558 Ibid., 924-925.

559 Ibid., 925.

560 HTK, 1985-1986 (29-10-1985) 865.

561 Ibid. 883.

562 HTK, 1985-1986 (29-10-1985) 883.

563 HEK, 1985-1986 (18-12-1985) 377.

564 Ibid.

565 In the introduction of this research, more is said on the rhetorical function of narratives.

566 The author – born in 1983 – and many of her relatives have their origin in Harlingen's vicinity. They have no memories at all of any festivities in honour of Caspar di Robles. This does not necessarily mean that there were not any. However, they most certainly were not as grand as Ans van der Werf-Terpstra suggested in her contribution to the debate. The watchful eyes in the double-faced head are, in fact, directed only north- and southwards.

567 Chris van der Klaauw in HOCV, 1979-1980 (29-04-1980) 1753-1754.

568 Minister of Foreign Affairs Hans van den Broek in HUCV, 1984-1985 (25-03-1985) 26.

569 Joost van Iersel in HTK, 1985-1986 (29-11-1985) 882 and Hans Oskamp (PvdA) in HEK, 1979-1980 (10-06-1980) 924.

570 Joost van Iersel in HTK, 1985-1986 (29-11-1985) 882.

571 See for instance Frans Weisglas in HTK, 1985-1986 (29-10-1985) 871; Tom Struick van Bemmelen (VVD) in HEK, 1985-1986 (18-12-1985) 374 and – with regard to the Greek accession – Jan Baas (VVD) in HEK, 1979-1980 (10-06-1980) 927.

572 The vote in the Lower House took place on 6 May. Approval in the Upper House followed on 10 June 1980. In the minutes on the voting, the decision in favour or against of the CPN is not mentioned.

573 The Lower House voted on 5 November 1985, followed by approval in the Upper House on 18 December. In the minutes on the voting, the decision in favour or against of the CPN is not mentioned.

574 For the full text of the Genscher/Colombo Plan see: www.europarl.europa.eu/brussels/website/media/Basis/Geschichte/EGKSbisEWG/Pdf/Genscher_Colombo.pdf. (last visit 19-12-2012)

575 Bulletin of the European Communities, June 1983 6/1983 pp. 24-29. The text of the Declaration can also be consulted online via: www.eurotreaties.com/stuttgart.pdf (last visited 19-12-2012).

576 Third section of the preamble of the Stuttgart Declaration.

577 Since the Stuttgart Declaration did not contain arrangements for practical implementation of its provisions, these did not immediately follow from it.

578 The White Paper was published in: COM (85) 310 final, 14.6.1985. It can also be downloaded (full text): http://europa.eu/documents/comm/white_papers/pdf/com1985_0310_f_en.pdf (last visit 19-12-2012).

579 These countries signed the document with a delay, since they awaited the result of a Danish referendum on the treaty before giving their consent to the Treaty. The Treaty was published in: OJ L 169 of 29.6.1987. It can also be consulted at: http://ec.europa.eu/economy_finance/emu_history/documents/treaties/singleuropeanact.pdf (last visit 19-12-2012).

580 See the first section the preamble: 'Moved by the will to (….) transform relations as a whole among their States into a European Union […].'

581 See the second section of the preamble: 'Resolved…etc.'

582 See the fourth section of the preamble: 'Convinced….etc.'

583 See the Queen's speech of 16 September 1986. It is read traditionally at the start of the new parliamentary year on the third Tuesday in September.

584 HTK, Bijlagen 1985-1986, 19626. 3, 7.

585 Ibid.

586 HTK, Bijlagen 1985-1986, 19626.2.

587 HTK, Bijlagen 1985-1986, 19626.3, 8.

588 The *Wetenschappelijke Raad voor het Regeringsbeleid*.

589 WRR, *De Onvoltooide Europese integratie*. ('s-Gravenhage: Staatsuitgeverij, 1986), 169.

590 Hollander, 'The Dutch Intellectual Debate on European Integration (1948-present), 208-210.
NB: As was also remarked in parliament (HEK, 1986-1987 (15-12-1986) 499), from the second half of the 1980s onwards, the *number* of publications in the Netherlands on European integration started to grow. This increase might very well be connected to the growing competences of the European Communities as well as to a greater involvement of the Dutch citizens in this process, stemming from the introduction of direct elections for the EP.

591 P. van Nuijsenburg, 'Europarlementariër Hans Nord over jubileum Europese Beweging: "Niemand loopt meer warm voor ideaal van Europese eenwording"', in: *Leeuwarder Courant*, 01.10.1987, p.13.

592 Bernard Bot in an interview with the author on 24 April 2009

593 In 1984, the name of D'66 was changed into D66.

594 HTK, 1986-1987 (12-11-1986) Van Iersel (CDA), 1265. For words to the same effect see: Ibid., Eisma (D66) 1250-1252; Weisglas (VVD) 1253-1255; Van Traa (PvdA) 1257-1261.

595 HTK, Bijlagen 1985-1986, 19626. 5, .2-3.

596 See the various complaints of the various parties on these issues in HTK, Bijlagen 1985-1986, 19626. 5.

597 For the full advice of the Council of State see HTK, Bijlagen 1985-1986, 19626. B, 9.

598 HTK, Bijlagen 1985-1986, 19626. 5, 3.

599 HTK, 1986-1987 (12-11-1986) 1264. See also HEK, 1986-1987 (16-12-1986) 490.

600 HEK, 1986-1987 (16-12-1986) 499. The EP had shown itself to be very critical of the SEA. Eventually, however, it had accepted the document with a large majority of 209 votes in favour, 61 against and 42 abstentions.

601 HTK, Bijlagen 1985-1986, 19626. 9.

602 HTK, Bijlagen 1985-1986, 19626. 5, 3-5. In the elections of May 1986, the CPN had lost its seats in the Lower House.

603 Ibid., 4.

604 HTK, 1986-1987 (12-11-1986) Leerling (RPF) 1255 and 1284-1285; Schutte (GPV) 1261-1264; Van Dis (SGP) 1268-1269.

605 In the 1980s, due to disappointing turnout rates at the elections for European Parliaments and a change in the contents and tones of the public intellectual debate, the realisation started to set in that the process of European integration was in danger of remaining a project of political elites not taking root with the broader national populations. In many Dutch parliamentary debates of the 1980s on European integration expressions of this concern can be found. See, for an example, Piet Blauw (VVD) in HUCV 1980-1981 (24-11-1980), 25-4.

606 HTK, 1986-1987 (12-11-1986) 1264 and 1288.

607 Ibid., 1263.

608 HEK, 1986-1987 (16-12-1986) 501.

609 HTK, Bijlagen 1985-1986, 19626 no. 5, 12.

610 Leerling (RPF) in HTK, 1986-1987 (12-11-1986) 1257. See also ibid., Schutte (GPV) 1263-1264; and Van Dis (SGP) 1268.

611 HTK, 1986-1987 (12-11-1986) 1294.

612 See State Secretary of European Affairs René van der Linden (CDA) in HEK, 1986-1987 (12-12-1986) 499.

613 Ibid.

614 HTK, (1986-1987) (12-11-1986) 1294.

615 See the votes on the bill in HTK, 1986-1987 (18-11-1986) 1385 and HEK, 1986-1987 (16-12-1986) 504.

616 Pieter VerLoren van Themaat in HTK, Bijlagen 1991-1992, 22647.8. VerLoren van Themaat was a well-known Dutch European Law expert, present on invitation at this parliamentary meeting.

617 See Report on Economic and Monetary Union in the European Community (Brussels, Luxembourg, OOPEC, 1989).

618 Via secured derogations the United Kingdom and Ireland remained outside the Schengen Area.

619 The acceleration in the process of European integration can be interpreted as to reflect the various historical occurrences of the turn of the decade. This is confirmed in much of the (inter)national literature. See, for instance, Tony Judt, *Postwar. A history of Europe since 1945* (London: Heinemann, 2005); Desmond Dinan, *Ever Closer Union. An introduction to European integration* (Basingstoke: Palgrave McMillan, 2005), in particular Chapter 4; Bob van den Bos, *Mirakel en debacle. De Nederlandse besluitvorming over de Politieke Unie in het Verdrag van Maastricht* (Assen: Koninklijke Van Gorcum, 2008), 65; Bram Boxhoorn and Max Jansen, *De integratie van Europa: een historische balans* (Bussum: Coutinho, 2002).

620 Directive 79/409 of the Council of 2 April 1979 on the Conservation of Wild Birds, OJ 1979 L 103/1. For the 1987 judgment of the ECJ see: Case C-236/85, Commission v. Netherlands [1987] ECR 3989.

621 This Directive obliged the European Member States to notify the European Commission of national rules concerning technical product specifications. In case such a rule hindered the free movement of goods, the European Commission and the other EC Member States could lodge complaint against the prescription of such rulings.

622 Erik Jurgens in an interview with the author on 13 April 2011.

623 B. H. ter Kuile, *Hoe ver ligt Den Haag nog van Brussel?: bespiegelingen op Prinsjesdag over slinkende bevoegdheden van onze provinciale Staten-Generaal binnen de Europese Gemeenschap* (Zwolle: Wolters Kluwer, 1989); J.Th.J. Berg, *Overleeft de Tweede Kamer Europa?: symposium ter gelegenheid van de ingebruikneming van de nieuwbouw van de Tweede Kamer* ('s-Gravenhage: Sdu, 1992).

624 See, among others, HTK, Bijlagen 2000-2001, 28449.1, p.2.

625 The full text of the agreement can be viewed on: www.statewatch.org/semdoc/assets/files/keytexts/SchAg.htm (18-11-2012).

626 Within this dichotomy the Schengen Agreement of 1985 was referred to as Schengen I.

627 HTK, Bijlagen 1985-1986, 19326.1, 2.

628 HTK, Bijlagen 1985-1986, 19326.1, 4-5.

629 HTK, Bijlagen 1985-1986, 19326.1, 3.

630 Ibid.

631 Ibid., 4.

632 HTK, 1985-1986, 19326 B.

633 In comparison, on the far more voluminous Treaties of Rome, less than 40 parliamentary documents existed. After 1995, the collection of parliamentary documents even expanded.

634 See, among others, HTK, Bijlagen 1985-1986, 19326. 5-7 and 9, etc.

635 See, among others, HTK, Bijlagen 1985-1986, 19326 8, 10, 19, etc.

636 HUCV, 1987-1988 (07-03-1988) 3.

637 HTK, 1988-1989 (28-06-1989) Van Traa (PvdA) 6708; Wolffensperger (D66) 6711. See also Dijksta (VVD) in HUCV, 1987-1988 (07-03-1988) 12.

638 Gerrit Jan Wolffensperger (D66) in ibid., 13.

639 HTK, 1988-1989 (28-06-1989) 6709. See also HTK, 1989-1990 (13-06-1990) 4151-4152 and Leerling (RPF) in ibid., 4252.

640 Gerrit Jan Wolffensperger (D66) in HUCV, 1987-1988 (07-03-1988), 13-14. See also Ineke Haas-Berger (PvdA) in ibid. 5; Jan-Kees Wiebenga (VVD) in ibid., 25

641 State Secretary of European Affairs René van der Linden (CDA) in HUCV, 1987-1988 (07-03-1988) 30.

642 HTK, 1989-1990 (13-06-1990) 4246. For words to the same effect see Wolffensperger (D66) in HTK (07-03-1988) 13 and/or Van Traa (PvdA) in HTK (28-06-1989) 6709.

643 HTK, Bijlagen 1987-1988, 20031.5.

644 HTK, 1987-1988 (22-03-1988) 3190.

645 Official Journal L 239 (22-09-2000) P. 0019 - 0062. The full text of the Convention implementing the Schengen Agreement can also be viewed on: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922(02):en:HTML (19-12-2012).

646 For details on the competences of the Executive Committee see the various provisions that address its role and functioning, such as 3.1; 5.1; 5.3;8; 12.3; 17.1-3; etcetera.

647 See provisions 92-95 of the implementation agreement.

648 HTK, Bijlagen 1990-1991, 22140.3, 7.

649 Ibid.

650 Ibid., 8.

651 Ibid., 6. The Dutch constitution (1983) stipulated that this could only be done in compliance with article 91, subsection 3: 'Any provisions of a treaty that conflict with the Constitution or which lead to conflicts with it, may be approved by the Chambers of the Parliament only if at least two-thirds of the votes cast are in favour.'

652 HTK, Bijlagen 1990-1991, 22140.3, 5.

653 L.A. Geelhoed, 'Gemeenschapsrecht en nationale wetgeving' in: L.A.(ed.) Geelhoed, Wetgeving in beweging: verslag van de Landelijke Bestuurskunde Dag op 21 maart 1991 gehouden aan de Katholieke Universiteit Brabant (Zwolle: Tjeenk Willink, 1991), 51-59, here 56.

654 Ibid.

655 HTK, Bijlagen 1990-1991, 22140.B, 45.

656 Ibid., 38.

657 Ibid.

658 Ibid.

659 Ibid., 7.

660 Ibid.

661 Ibid., 2.

662 Ibid., 6.

663 Ibid., 40.

664 Ibid., 38.

665 See HTK, 1989-1990 (13-06-1990) 4249.

666 Wolffensperger in HTK, 1989-1990 (13-06-1990) 4247. See also Wolffensperger in HUCV, 1987-1988 (07-03-1988) 14-15.

667 HTK, 1989-1990 (13-06-1990), 4246 and 4257.

668 Ibid., 4253.

669 HTK, 1988-1989 (28-06-1989) 6714.

670 HTK, 1987-1988 (29-06-1988) Van Iersel (CDA) 5271; HTK, 1988-1989 (28-06-1989) Van Weezel (CDA) 6714

671 HTK, 1989-1990 (13-06-1990) De Hoop Scheffer (CDA) 4250.

672 Ibid., Piet Dankert (PvdA) 4268.

673 HTK, 1991-1992 (30-01-1992), Schutte (GPV) 2971; De Hoop Scheffer (CDA) 2983.

674 Ibid., 2972.

675 Maarten van Traa in HTK, 1991-1992 (17-06-1992) 5599. For similar remarks of the other parties see: HTK, 1991-1992 (30-01-1992), 2984; 2989-2990; 2994; 3001; HTK, 1991-1992 (17-06-1992) 5588-5589; 5593; 5597; 5599; 5612; HEK, 1992-1993 (16-02-1993) 736-737; 748-753.

676 HTK, 1991-1992 (30-01-1992). See among others: Wiebenga (VVD) 2967; Sipkes (Groenlinks) 2975; Leerling (RPF) 2976; Wolffensperger (D66) 3002.

677 Ibid., 2971.

678 Ibid.

679 Ibid., Sipkes (GroenLinks) 2975; Leerling (RPF) 2976. But see also Wolffensperger (D66) 3020. On the privacy issue see also HEK, 1992-1993 (16-02-1993) Tummers (PvdA) 743; Bolding (GroenLinks) 747. The soft-drugs debate was intensified in the 1990s by the recurring rejection of the Dutch stance in the French parliament and attempts of the European Commission trying to establish a common European policy on soft-drugs. See HTK, 1991-1992 (17-06-1992) 5608 and HTK, 1991-1992 (18-06-1992) 5621.

680 HTK, 1991-1992 (17-06-1992) 5608.

681 Ibid., 5581 en 5583.

682 HTK, 1991-1992 (30-01-1992) 3024.

683 Ibid.

684 HTK, 1991-1992 (17-06-1992) 5606.

685 Ibid., 5611.

686 Perelman, *The realm of rhetoric,* 126.

687 See, for instance, Sipkes (GroenLinks) in HTK, 1991-1992 (30-01-1992) 3012.

688 Ibid.

689 HTK, 1991-1992 (05-02-1992) 3151.

690 Ibid., 3152.

691 HTK, 1991-1992 Bijlagen 22140.20, p.1. See also HTK, 1991-1992 (25-06-1992) 590.

692 HTK, 1991-1992 Bijlagen 22140.20, 2.

693 HTK, Bijlagen 1952-1953, 2911.16.

694 HTK, Bijlagen 1956-1957 4725.21.

695 Erik Jurgens in an interview with the author on 13 April 2011.

696 HTK, 1991-1992 (17-06-1992) 5583.

697 HEK, 1992-1993(23-02-1993) 782.

698 HTK, 1991-1992 (25-06-1992) 5901.

699 Hans van Weezel (CDA) in HTK, 1991-1992 (17-06-1992) 5606.

700 'Draft Treaty articles with a view to achieving Political Union', Non-paper by the Luxembourg Presidency, Europe, Documents, No. 1709/1710, 3 May 1991.

701 Jaap de Zwaan in an interview with the author on 28 March 2011.

702 Van den Bos, *Mirakel en debacle,* 102.

703 Ibid., 103-104. See also 'Draft Treaty on the Union', Europe, Documents, No.1722/1723, 5 July 1991.

704 Term derived from an interview with Ronald van Beuge on 19 March 2010.

705 Van den Bos, *Mirakel en debacle,* 137-140.

706 Ibid., 140-142.

707 The exact backgrounds of this occurrence are still the subject of scholarly debate. See, particularly, Van den Bos, *Mirakel en debacle*; S. Rozemond, *De gang naar Maastricht* (Den Haag: Nederlands Instituut voor Internationale Betrekkingen Clingendael, 1991).

708 Van den Bos, *Mirakel en debacle*, 3.

709 Frits Schaling, 'Vernedering voor Den Haag totaal' NRC *Handelsblad* (01-10-1991) 1 and 5.

710 Treaty on European Union, OJ 1992 C 191/1.

711 The European Economic Community (EEC) was from Maastricht onwards referred to as the Economic Community (EC). EC affairs were dealt with within the constellation of the 'first pillar' of the Treaty on European Union.

712 In the SEA the term had been already introduced with regard to environmental affairs, but with the Treaty of Maastricht subsidiarity was embedded as a general principle. It was recorded in Article A of the Common Provisions of the Treaty on European Union.

713 The general subsidiarity principle started out as soft law arrangement – originally a political principle agreed on at the Edinburgh Council (1992) – and was in Maastricht transformed into hard law by incorporating it in the *acquis communautaire.*

714 HTK, Bijlagen 1989-1990, 20596.6.

715 HTK, Bijlagen 1990-1991, 20596.32.

716 HTK, Bijlagen 1990-1991, 21952.20.

717 With the entering into force of the Maastricht Treaty, the EP would receive greater influence in the process of the appointing of the members of the European Commission, the right of petition, the right to instigate an inquiry, and would be consulted with regard to certain second and third pillar issues. Furthermore, its right of approval in budget matters was strengthened and a European ombudsman came into being. See the Treaty on European Union and also HTK, 1991-1992, 22647.3, p. 17.

718 HTK, 1991-1992, 22647.3, 5.

719 Ibid.

720 In accordance with Article N, subsection 2 of the treaty.

721 HTK, 1991-1992, 22647.3, 11.

722 Ibid.

723 Ibid.

724 HTK, 1979-1980 (25-03-1980) 4084.

725 Minister of Interior Hans Wiegel (VVD) in HEK, 1980-1981(09-12-1980) 238.

726 In the Treaty these were Article 100 C and Article K.1. of title VI on the cooperation in the area of Justice and Home Affairs.

727 HTK, Bijlagen 1991-1992, 22647.3, 11.

728 HTK, Bijlagen 1991-1992, 22647, 1-2.

729 HTK, Bijlagen 1992-1993, 22647. A, in particular p. 18 and 48.

730 See, for instance, D.J. Elzinga, 'Dualisme en het constitutionele organogram. Revitalisering van BZK dringend noodzakelijk' in Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, *Symposium: 10 jaar dualisering* (The Hague, July 2012), pp. 12-25, here 20.

731 For more details on the composition of the Lubbers III cabinet, see: www.parlement.com/id/vh8lnhronvw3/kabinet_lubbers_iii_1989_1994. (19-12-2012).

732 In 1990, Frits Bolkestein had succeeded Joris Voorhoeve as the party leader.

733 From 1986 onwards, the view of the Dutch public intellectuals turned inwards, towards the national domain and the cost of European integration regarding national identity. See Hollander, 'The Dutch intellectual debate on European integration', 210-215.

734 Geelhoed, 'Gemeenschapsrecht en nationale wetgeving', 59.

735 Ibid.

736 HTK, Bijlagen 1979-1980, 15468.11.

737 A.W. Heringa, 'De verdragen van Maastricht in strijd met de Grondwet. Goedkeuring met twee derde meerderheid? *NJB* 24 (1992) 749-752, here 751.

738 M.C. Burkens and B.P. Vermeulen, 'Maastricht in strijd met de grondwet? Reactie 1' in *NJB* 27 (1992) 861-862, here 861.

739 Ibid.

740 Ibid.

741 See the respective reactions of C.A.J.M. Kortmann, I. Sewandono and L.F.M. Besselink in in *NJB* 27 (1992), 862 and further.

742 HTK, 1992-1993 (03-11-1992) 1181 and HTK, Bijlagen 1992-1993, 22647.11/13/17/18.

743 HTK, Bijlagen 1991-1992, 22647.8. Also Constitutional Law specialist Professor Benno ter Kuile contributed to the meeting with a written comment.

744 A third term was added. HTK, 1992-1993 (12-11-1992).

745 HTK, 1992-1993, (03-11-1992), Weisglas (VVD) on p. 1158; De Korte (VVD) 1167-1168.

746 HTK, 1992-1993, (03-11-1992), 1168. Interestingly, considering the Euro- and debt crises that scourge the Union currently, many parties feared the consequences of developing a common monetary policy, without simultaneously working on a common *economic* policy. See, for instance, De Korte (VVD) in ibid., 1168; Van Middelkoop (GPV) in ibid., 1185; Van Iersel (CDA) in ibid., 1214-1215.

747 HTK, Bijlagen 1992-1993, 22647 (R1437) nr. 11, 22.

748 HTK, Bijlagen 1992-1993, 22647 (R1437) nr. 11, 3.

749 HTK, 1992-1993 (04-11-1992) 1240.

750 Ibid.

751 Van Middelkoop (GPV) in HTK, 1992-1993, (03-11-1992) 1181.

752 HTK, Bijlagen 1992-1993, 22647 (R1437) 11, 38-39.

753 Ibid., 34 and 40.

754 Ibid., 41.

755 HTK, Bijlagen 1992-1993 22647.11, p. 44 and Van Middelkoop (GPV) in HTK, 1992-1993 (03-11-1992) 1185.

756 Schuurman (RPF) in HEK, 1992-1993 (15-12-1992) 385. See also Van Dis (SGP) in HTK, 1992-1993 (03-11-1992) 1199.

757 Van Dis (SGP) HTK, 1992-1993, (03-11-1992)1197-1198. See also Leerling (RPF) ibidem, 1180 and Van Iersel (CDA) ibid., 1214.

758 Van Dis (SGP) in HTK, 1992-1993, (03-11-1992) 1197 and 1184.

759 HTK, Bijlagen 1992-1993, 22647 (R1437) 11, 42-43.

760 Schuurman (RPF) in HEK, (15-12-1992), 386.

761 HTK, Bijlagen 1992-1993 22647 (R1437) 11, 10.

762 Ibid. See also Erik Jurgens (PvdA) in HTK, Bijlagen 1991-1992, 22647.8, 11.

763 HTK, Bijlagen 1992-1993 22647.11, 31.

764 Brouwer (GroenLinks) in HTK, 1992-1993 (24-09-1992) 286; De Boer (GroenLinks) in HEK, (15-12-1992), 369.

765 HTK, Bijlagen 1992-1993, 22647 (R1437) 7.

766 In that year, a referendum on a new constitution was held in the Batavian Republic.

767 Leerling (RPF) in HTK, 1992-1993 (03-11-1992) 1175-1176; Van Middelkoop (GPV) in HTK, 1991-1992 (26-11-1991) 1775.

768 HTK, 1992-1993, (04-11-1992) Eisma (D66) 1229. See also HEK, 1992-1993 (15-12-1992) 361.

769 HTK, 1992-1993, (03-11-1992) see, among others, Weisglas (VVD) on p. 1160; Brouwer (GroenLinks) 1188-1189; Van Middelkoop (GPV) 1182-1183. See also HTK, Bijlagen 1992-1993, 22647 (R1437) 11, the contribution of D66 at p. 20.

770 See Van Middelkoop (GPV) in HTK, 1992-1993, (03-11-1992) 1183. See also Schuurman (RPF) HEK, 1992-1993 (15-12-1992) 387.

771 See, respectively, HTK, Bijlagen 1992-1993, 22647 (R1437) nr. 20 and 30.

772 Jaap de Zwaan in an interview with the author on 28 March 2011.

773 Ibid.

774 Jurgens (PvdA) in HTK, 1992-1993, (04-11-1992) 1242.

775 HTK, 1992-1993, (03-11-1992) 1204.

776 Ibid., 1189.

777 Ibid.

778 Ibid.

779 HTK, 1992-1993 (04-11-1992), 1285.

780 HTK, 1989-1990 (01-05-1990) 3455.

781 HTK, 1991-1992 (11-12-1991), 2327-2328.

782 HTK, Bijlagen 1992-1993, 22647.13, 22. Or as Piet Dankert phrased it in the plenary debate: 'Decisions binding the Member States is not the issue'. See: HTK, 1992-1993 (04-11-1992) 1291.

783 HTK, Bijlagen 1992-1993, 22647.13, 21.

784 Ibid., 23.

785 Ibid.

786 HTK, Bijlagen 1992-1993, 22647.13, 21.

787 HTK, Bijlagen 1979-1980, 15049 (R 1100) 16.

788 Eisma (D66) HTK, 1992-1993 (04-11-1992) 1223.

789 Jurgens (PvdA), Ibid., 1239.

790 Ibid., 1245.

791 HEK, 1992-1993 (15-12-1992) 390.

792 Ibid.

793 Hollander, 'The Dutch intellectual debate on European integration', 210-215.

794 HEK, 1992-1993 (15-12-1992) 390.

795 Jaap de Zwaan in an interview with the author on 28 March 2011. See also the mocking comment of GroenLinks in HTK, Bijlagen 1992-1993, 22647.11, 24: '"such a small country cannot disturb the process indeed, we are dealing with only a small majority" […].'

796 Ronald van Beuge in an interview with the author on 19 March 2010. For the particular quote in the declaration see HTK, Bijlagen 1992-1993 21501-20, no 25, 2.

797 HTK, 1992-1993 (24-09-1992) 293.

798 Ibid., 293. For a similar thought see Erik Jurgens (PvdA) HTK, 1992-1993 (04-11-1992), 1245.

799 Minister Lubbers (CDA) in HEK, 1992-1993 (15-12-)1992, 409.

800 HEK, 1992-1993 (15-12-1992) 397.

801 HTK, 1992-1993, (04-11-1992) 1300.

802 HEK, 1992-1993 (15-12-1992) 393.

803 HTK, 1992-1993 (04-11-1992) 1319.

804 Ibid.

805 Ibid., 1284.

806 HTK, 1992-1993 (04-11-1992) 1237.

807 Ibid., 1238.

808 Van der Linden (CDA) in HTK, 1992-1993 (03-11-1992) 1213. For words to the same effect see the contribution of D66 in the explanatory memorandum: 'The result of a rejection might mean a decline of the European cooperation. […] That is why, for the time being, the members of this party do not intend to vote against the Treaty.' HTK, Bijlagen 1991-1992, 22647.11, 20.

809 Ibid., 407.

810 De Boer (GroenLinks) in HEK, 1992-1993 (15-12-1992) 369.

811 HTK, Bijlagen 1991-1992, 22647.11, 25.

812 De Boer (GroenLinks) in HEK, 1992-1993 (15-12-1992) 407.

813 Ibid.

814 HTK, 1992-1993 (05-11-1992) 409.

815 The four requests were received between 17 July 1989 and 24 November 1992.

816 The 'purple' administrations were the two successive coalitions of the PvdA, VVD and D66 that governed the Netherlands between 1994-2002. Both were led by Wim Kok (PvdA).

817 HTK, Bijlagen 1993-1994, 23 867 (R 1511) 14.

818 HTK, Bijlagen 1993-1994, 23 867 (R 1511) 13-14.

819 See Article 9a of the Constitution of Austria.

820 HTK, Bijlagen 1993-1994, 23 867 (R 1511) A, 2.

821 HTK, 1994-1995 (17-11-1994), Hirsch Ballin (CDA) 1494. For words to the same effect, see Van den Bos (D66) and

Van Middelkoop (GPV) 1497; Van den Berg (SGP) 1498; Rouvoet (RPF) 1500; Blaauw (VVD) 1502.

822 HTK, Bijlagen 1993-1994, 23 867 (R 1511) no.5, 3-4.

823 HTK, 1994-1995 (17-11-1994) 1496.

824 State Secretary of European Affairs Michiel Patijn (VVD) in HTK, 1994-1995 (17-11-1994), 1503.

825 The Dutch government turned out to be way off in the sense that, during the negotiations on European accession, the Austrian government insisted to keeping neutrality as a constitutional principle of importance.

826 See, for example, HTK, 1994-1995 (17-11-1994) Van den Berg (SGP) 1498.

827 HTK, 1994-1995 (17-11-1994) 1510.

828 HEK, 1994-1995 (13-12-1994) 254.

829 Treaty of Amsterdam, Official Journal C 340, 10 November 1997. The full text of the document can be downloaded via: http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html (19-12-2012).

830 See, for instance, R.H. Lauwaars, *De Verdragen van Amsterdam en Nice over de Europese Unie* (KNAW: Amsterdam, 2002) 21-22.

831 In various sources, this article is also referred to as Article 6, subsection 1.

832 Lauwaars, *De Verdragen van Amsterdam en Nice,* 8.

833 See provision K.6, subsection 2.b.

834 See also the various relevant parts of the treaty.

835 HTK, Bijlagen 1997-1998, 25922 (R 1613) 6.

836 Ibid.

837 Ibid.

838 Ibid., 8.

839 Ibid., 45.

840 Ibid., 46.

841 Ibid., 6.

842 See for the respective memoranda HTK, Bijlagen 1994-1995, 23 987. 2; HTK, Bijlagen 1994-1995, 24128. 2; HTK, Bijlagen 1994-1995, 24167.2; HTK, Bijlagen 1994-1995, 24251. 2; HTK, Bijlagen 1995-1996, 24609.1.

843 HTK, Bijlagen 1997-1998, 25922 (R 1613) A.

844 Adviesraad Internationale Vraagstukken, *Europa inclusief* (Den Haag: AIV, 1997), 17.

845 Hollander 'The Dutch intellectual debate on European integration', 210-215.

846 See the many columns of Fortuyn published in the 1990s in the weekly Elsevier and also: W.S. Fortuyn, *Zielloos Europa: tegen een Europa van technocraten, bureaucratie, subsidies en onvermijdelijke fraude,* (Utrecht: Bruna, 1997), pp.98-108.

847 The legal dispute underlying this judgment was a competition struggle between the Belgian security firms CIA Security and its rivals Signalson and Securitel. OJ 1983 L 109/8 Case C 194/94 CIA Securitel SA v Signalson SA et al. [1996] ECR I-2201.

848 Elsbeth Tiedemann, 'Lastig parket. Honderden voorschriften voldoen niet aan Brusselse procedures en zijn in feite ongeldig' *Elsevier*, 53 23 (07-06-1997) 12.

849 Hella Voûte-Droste (VVD) in HTK, 1996-1997, (11-06-1997) 6321.

850 Ibid., 6347-48; see also: Jan Marijnissen (SP) in ibid., 6315. For words to the same effect, stemming from an earlier date, see René van der Linden (CDA) in HTK, 1990-1991 (23-05-1991) 4617.

851 Van Dis (SGP) in HUCV, 1989-1990 (11-06-1990) 37-18.

852 HUCV, 1989-1990 (11-06-1990) 37-19.

853 HTK, 1996-1997 (11-06-1997) 6325.

854 HEK, 1997-1998 (02-12-1997) 373.

855 HUCV, 1989-1990 (11-06-1990) 37-39.

856 HTK, 1998-1999 (03-11-1998) 1147 and 1155.

857 HTK, 1997-1998, 25922 (R 1613) 4, 8.

858 See for example HTK, 1998-1999 (03-11-1998) Van Middelkoop (GPV) 1153; Scheltema-de Nie (D66) 1156.

859 HTK, 1998-1999 (03-11-1998) 1146. See also HTK, 1997-1998, 25922 (R 1613) 4, 5.

860 HTK, 1997-1998, 25922 (R 1613) no. 9. The Van den Akker amendment concerned Title IIIA of the Treaty of Amsterdam. Decisions in the third pillar remained subjected to the amendment Van Traa/De Hoop Scheffer.

861 See, respectively, HTK, Bijlagen 1991-1992, 22140.20; HTK, Bijlagen 1992-1993, 22647 (R1437) nr. 20 and 30.

862 The expression is borrowed from Olga Scheltema-De Nie who was an MP for D66 at the time that the Treaty of Amsterdam was dealt with in parliament. See HTK, 1998-1999 (03-11-1998) 1156.

863 HTK, 1998-1999 (05-11-1998) 1319.

864 HTK, Bijlagen 1997-1998, 25922 (R 1613) 4, 30.

865 Ibid.

866 HEK, 1998-1999 (21-12-1998) 424.

867 Ibid. This was also confirmed in an e-mail correspondence between Erik Jurgens and the author (14-04-2011).

868 HTK, 1998-1999 (03-11-1998), 1177.

869 HTK, Bijlagen 1997-1998, 25922 (R 1613) 5, 46.

870 HTK, 1998-1999 (03-11-1998), 1181-1182.

871 Scheltema-de Nie (D66) in ibid., 1158.

872 Ibid., 1175.

873 Ibid., 1176.

874 Former Minister of Foreign Affairs Bernard Bot in an interview with the author on 24 April 2009.

875 The parliamentary debates on these accessions do not add much to the insights derived from the earlier rounds of accession. Therefore, they are not separately discussed here. On 23 October 2002 the Lower House voted in favour of the accession, followed by a vote in favour of the Upper House February 2004.

876 Lauwaars, *De Verdragen van Amsterdam en Nice over de Europese Unie*, 24, but see also Zwerver (GroenLinks) in HEK, 2001-2002 (18-12-2001) 677 and Minister Van Aartsen (VVD) in HTK, 2001-2002 (21-11-2001) 1884.

877 OJ 2001/C 80/01. The full text of the treaty can be viewed on: http://eur-lex.europa.eu/en/treaties/

dat/12001C/pdf/12001C_EN.pdf (24 September 2012).

878 Bruno de Witte, 'The Nice Declaration: Time for a Constitutional Treaty of the European Union' in: *The International Spectator* 36 1 (2001) 21-30, here 24.

879 The term 'constitutional urgency' is derived from a short analysis of the Treaty of Nice of Professor of European Law Bruno de Witte, see http://aei.pitt.edu/65/1/NiceTreatyForum.html (24 September 2012). See also Bruno de Witte, 'The Nice Declaration: Time for a Constitutional Treaty of the European Union' in: *The International Spectator* 36 1 (2001) 21-30, here 24.

880 Ibid.

881 For the Ciampi/Rau imitative see: http://english.people.com.cn/english/200006/10/eng20000610_42689.html (18 September 2012) The full text of Chirac's speech, given before the German *Bundestag*, can be viewed on: www.cvce.eu/content/publication/2005/1/20/6a747c46-88db-47ec-bc8c-55c8b161f4dc/publishable_en.pdf (17 September 2012).

882 C 80/85-86, no. 23.

883 See Bruno de Witte, 'Apres Nice: Time for a European Constitution?' at: http://aei.pitt.edu/65/1/NiceTreatyForum.html. (24 September 2012).

884 C 80/85-86, no. 23, subsection 3.

885 Ibid., subsection 4.

886 Bulletin17.12.2001. The full text of the Laeken Declaration can be viewed on: www.europarl.europa.eu/summits/pdf/lae2_en.pdf (18 September 2012).

887 Laeken Declaration, 'II Challenges and reforms in a renewed Union', subsection 'Towards a Constitution for European citizens'.

888 See the section 'Towards a Constitution for European citizens'.

889 See the Laeken Declaration, under the heading 'Final document.'

890 Ibid.

891 In 2007 the Court of First Instance was renamed the General Court.

892 HTK, Bijlagen 2000-2001, 27818 (R 1692).3, 3 and 9.

893 Ibid.

894 Ibid., 9-10.

895 Ibid., 12.

896 Ibid.

897 HTK, Bijlagen 2000-2001, 27818 (R 1692), A.

898 Ibid., 1.

899 Ibid., 4.

900 In various memoranda, the Dutch government had expressed to see a European Constitution as the next step to focus on after the entering into force of the Treaty of Nice. See, for example, HTK, Bijlagen 2000-2001, 27407.9, 5

901 J. Rood, 'De politieke finaliteit van het Europese integratieproces', in: *Vrede en veiligheid*, 4 (2000), pp. 554-574, here 566. See also: K. Koch, 'Misbaar over de staat. Het proces van 'ontstatelijking' in Europa', in: A. van Staden (ed.), *De nationale staat: onhoudbaar maar onmisbaar?* (Assen/Den Haag:Van Gorcum/Instituut Clingendael, 1996) pp.17-30, here 24-25.

902 See also Hollander, 'The Dutch intellectual debate on European integration' 210-215.

903 G.F. van der Tang, *Grondwetsbegrip en grondwetsidee* (Deventer: Gouda Quint 1998) 368-369; F. Amtenbrink and S.B. van Baalen (ed.), *Europa; eenheid in verscheidenheid?: Groningse beschouwingen over de Europese Grondwet* (Den Haag; Boom juridische uitgevers 2005); J. Pelkmans, *Nederland en de Europese grondwet*, (Amsterdam: University Press, 2003).

904 Dieter Grimm, 'Does Europe Need a Constitution?' (1995) 1 3 *European Law Journal,* 282-302. P.J.G. Kapteyn, *Een Europese grondwet: retoriek en realiteit* (Amsterdam: Vossiuspers UvA, 2002) 26.

905 For the official electoral programme of LN for the 2002 elections, see: http://dnpp.eldoc.ub.rug.nl/FILES/root/programmas/vp-per-partij/ln/ln02.pdf (19-12-2012).

906 See, among others, Fortuyn's renowned work *De puinhopen van acht jaar paars* (The Mess of Eight Purple Years) (Uithoorn: Karakter, 2002).

907 Fortuyn, *De puinhopen van acht jaar paars*, 178-179. See also W.S. Fortuyn, *Zielloos Europa: tegen een Europa van technocraten, bureaucratie, subsidies en onvermijdelijke fraude* (Utrecht: Bruna, 1997).

908 See, for instance, Timmermans (PvdA) in HTK, 2001-2002 (21-11-2001)1863; Scheltema-de Nie in ibid, 1866; Verhagen (CDA) in ibid., 1873; Van Eekelen (VVD) in HEK, 2001-2002 (18-12-2001) 683. Concretely, the shortcomings that were mentioned were that there was still too little decision making by QMV and that QMV was not structurally linked to extension of power of decision of the EP. This implied in fact widening of the much discussed democratic deficit. The EP should be arranged differently.

909 See, for instance, Scheltema- de Nie (D66) in HTK, 2001-2002 (21-11-2001) 1868; Verhagen (CDA) in ibid., 1872; René van der Linden in HEK, 2001-2002 (18-12-2001) 674.

910 HEK, 2001-2002 (18-12-2001) 680. It should be noted, however, that contrary to how the process of unification in the USA is often depicted by participants in the debate on European integration, it was hard-won. Hold-ups and an armed conflict were needed before the Union was there. For a new perspective on the process of American unification, see the forthcoming PhD thesis of Jelte Olthof, *Patchwork Republic* [working title] (Groningen University).

911 Eimert van Middelkoop (CU) in HTK, 2001-2002 (21-11-2001) 1870.

912 Marijke Vos (GL) in HTK, 2001-2002 (21-11-2001) 1877.

913 Jan Marijnissen in HTK, 2001-2002 (21-11-2001) 1879.

914 Ibid.

915 Frans Timmermans (PvdA) in HTK, 2001-2002 (21-11-2001) 1862.

916 Jacob Kohnstamm (D66) in HEK, 2001-2002 (18-12-2001) 676. For words to the same effect see Olga Scheltema- de Nie (D66) in HTK, 2001-2002 (21-11-2001), 1865 and 1868.

917 Maxime Verhagen (CDA) in ibid., 1873. For a similar remark in the Upper House, see Renee van der Linden (CDA) in HEK, 2001-2002 (18-12-2001) 673: 'The result is too much to be 'against […].'

918 Hans van Baalen (VVD) in HTK, 2001-2002 (21-11-2001) 1881.

919 HTK, 2001-2002 (21-11-2001) 1865.

920 Ibid. 1879.

921 Veling (CU) HEK, 2001-2002 (18-12-2001) 679.

922 Ibid., 680.

923 HTK, Bijlagen 2000-2001, 27 818 (R 1692). 5, 7.

924 In that year the people of the Netherlands were called to vote on the constitution of the Batavian Republic.

925 Vos (GL) in HTK, 2001-2002 (21-11-2001) 1879.

926 For the complete composition of the Convention see: http://european-convention.eu.int/EN/Static/Static6c13.html?lang=EN&Content=Composition. (last visit 19-12-2012).

927 For the names of the representatives of the candidate Member States see: http://european-convention.eu.int/EN/Static/Static6cf8.html?lang=EN&Content=Parlement_Nat. (last visit 19-12-2012).

928 I.e. the Committee of the Regions and the Economic and Social Committee.

929 Maryem van den Heuvel, the only Dutch diplomat in the team of Giscard D'Estaing, in an interview with the author on 22 March 2011.

930 Ibid.

931 'Introductory speech by president V. Giscard d'Estaing to the convention on the future of Europe', p. 6. The full text of the speech can be viewed via http://european-convention.eu.int/docs/speeches/1.pdf (28 September 2012).

932 Ibid., 11.

933 All speeches, proposals and documents produced by the Convention can be traced via: http://european-convention.eu.int/ (last visit 19-12-2012)

934 This picture is supported by the recollection of Maryem van den Heuvel as discussed in an interview with the author on 22 March 2011.

935 S.n., 'Giscard leidt conventie over hervorming EU' *NRC Handelsblad,* 17.1.2001, 4.

936 HTK, 2001-2002 (12-12-2001) 2850.

937 Jacques Pelkmans, Monika Sie Dhian Ho and Bas Limonard, *Nederland en de Europese Grondwet* (Amsterdam: Amsterdam University Press, 2003) 14; Ben van der Velden, 'Gijs de Vries naar Europese Conventie; opvolger Hans van Mierlo' *NRC Handelsblad* 5.10.2002, p 3. Other members of the Dutch group in the Convention were: René van der Linden (senator for the CDA) and Frans Timmermans (MP for the PvdA), their deputies Wim van Ekelen (senator for the VVD) and Jan van Dijk (MP for the CDA), and the Dutch MEP for the European People's Party (EPP) Hanja Maij-Weggen.

938 S.n.,'Van Mierlo zit er ook als zichzelf' *NRC Handelsblad* 17.2.2002, 4.

939 Apart from Giscard d'Estaing, the twelve-headed Presidium of the Convention was composed of three representatives of the governments holding the Council's Presidency during the Convention (Spain, Denmark, Greece), two representatives of respectively the Irish and the German parliament, two delegates of the EP (from Germany and Spain) and two Commission members, French and Portuguese respectively. The leadership of the Secretariat of the Convention – the organ responsible for the substantive support of the

Presidium – was granted to the former British top-diplomat Sir John Kerr. In his Secretariat, one Dutch diplomat occupied a seat as a draftsman.

940 'Dutchbat' is short for the Dutch battalion that, under the command of the UN in operation UNPROFOR, was responsible for safekeeping the Muslim enclave Srebrenica during the Bosnian war. On 11 July 1995, the enclave was taken by the Serbs. Over 7000 people were murdered.

941 Maryem van den Heuvel in an interview with the author on 22 March 2011.

942 HTK, Bijlagen 2001-2002, 21501-20 and 27407, nr. 184, 1.

943 See, for instance, HTK, Bijlagen 2001-2002, 28604. 3, p.18 and HTK, Bijlagen 2002-2003, 28473.3, 2-3.

944 Conv 457/02 (11 December 2002) 5.

945 In the Dutch press, the 'permanent chairman' of the Council was consistently referred to as 'the Sun King after a statement of the VVD-State Secretary of Foreign Affairs Atzo Nicolai. See for instance 'Benelux is tegen Zonnekoning EU' *De Volkskrant* (21.01.2003); 'Angst voor de Zonnekoning; Frans-Duitse vriendschap is weer opgeleefd' *De Groene Amsterdammer* 127 no. 5 (01.02.2003); 'Machtsgreep grote EU-landen dreigt; staatssecretaris Nicolaï tekent protest aan' *NRC Handelsblad* (15.04. 2003).

946 Hester Menninga in an interview with the author on 15 October 2010.

947 *De facto*, it had lost much of its meaning already.

948 Wim van Eekelen in an interview with the author on 29 January 2010.

949 Bernard Bot in an interview with the author on 24 April 2009.

950 Willem Pedroli in an interview with the author 9 February 2011. This attitude of, what could be called, 'constitutional compliance' can be explained from a national constitutional culture, lacking strong constitutional normativity. See also Peter van den Berg, 'De Nederlandse Grondwet: hoofdgerecht of bijgerecht?' in: *Ars Aequi* 60 3 (maart 2011) 168-170.

951 S.n.,'Van Mierlo zit er ook als zichzelf' *NRC Handelsblad* 17.2.2002, 4.

952 HTK, Bijlagen 2002-2003, 28473.3 Together with the Benelux-memorandum this strategic document formed the core of the publications of the Dutch government on the Convention.

953 HTK, Bijlagen 2002-2003, 28473.3, p.2-3.

954 Ibid, 3.

955 ANP, 'Van Mierlo stapt uit de Conventie (samenvatting)', 26.09.2002.

956 In various interviews with those involved in the Convention, conducted within the context of this research, the replacement of Van Mierlo by Gijs de Vries was explained in suchlike terms.

957 During the Convention, the Dutch government reconsidered its initial stance that a permanent Chair would not be allowed. On 17 June 2003, State Secretary Atzo Nicolaï (VVD) announced that the eventual proposal of the Convention for a permanent chairman of the Council was 'very acceptable' to the Netherlands. See: HEK, 2002-2003 (17-06-2003) 895.

958 See the various provisions in the final document of the Convention which refer to qualified majority voting. CONV 850/03 (18 July 2003).

959 Bernard Bot in an interview with the author on 24 April 2009.

960 HTK, 2002-2003, (13-03-2003) 3252.

961 See, for instance, HTK/HEK, Bijlagen 2002-2003, 28473 nr. 2/158; nr. 3/158a; nr.6/158b; nr. 8 /158c; nr. 11/158d; nr.33/158e.

962 The Committees involved were the permanent Commission for European Affairs of the Lower House, the permanent Commission for European Cooperation Organisations and the special commission for the Council on Justice and Home Affairs of the Upper House.

963 Wim van Eekelen and Hester Menninga in their respective interviews with the author.

964 HTK/HEK, Bijlagen 2002-2003, 28437.3/158, 10.

965 Even parties generally critical of the integration process, appreciated these focal points. See, for instance, Rouvoet (CHU) in HTK, 2002-2003 (13-03-2003) 3244.

966 HTK/HEK, Bijlagen 2002-2003, 28473, no's. 158e/33, 4.

967 Ibid.

968 HTK/HEK, Bijlagen 2002-2003, 28473, no's. 158e/33, 37 and 57.

969 Ibid., 2847 and 2852.

970 HTK, 2002-2003 (13-03-2003) 3249. For a similar line of reasoning see Harry van Bommel (SP) in HTK, 2002-2003 (14-06-2003) 4654.

971 HTK, 2002-2003 (13-03-2003) 3249. See also Charland, 'Constitutive Rhetoric: the Case of the Peuple Québécois'.

972 HTK, 2002-2003 (13-03-2003), 3247.

973 For parliamentarians making this association see, among others, Jurgens (PvdA) in HEK, 2003-2004 (04-11-2003) 204-205 and Kox (SP) in ibid., 232.

974 André Rouvoet in HTK, 2002-2003 (13-03-2003) 3245.

975 HTK/HEK, Bijlagen 2002-2003, 28473, no's. 158e/33, 52

976 Ibid. See also HEK, 2002-2003 (17-06-2003) p.884 and 892.

977 HTK, 2002-2003 (13-03-2003) 3247 and HTK/HEK, Bijlagen 2002-2003, 28473, no's. 158e/33, 21.

978 HTK/HEK, Bijlagen 2002-2003, 28473, no's. 158e/33, 21.

979 Chapter 1, Article 52, subsection 3 of the draft-Treaty

980 HEK, 2002-2003 (17-06-2003) 891.

981 See Leo Platvoet (Groen Links) in ibid., 899.

982 HEK, 2002-2003 (17-06-2003) 891.

983 HTK, Bijlagen 2002-2003, 28473, nr. 28, 1.

984 HTK, 2002-2003 (11-06-2003) 4325.

985 HEK, Bijlagen 2002-2003, 28473, nr. 1580 and HEK, 2002-2003 (17-06-2003) 901.

986 HEK, 2003-2004 (04-11-2003) 206.

987 Ibid.

988 Ibid., 222.

989 HTK, 2001-2002 (19-12-2001) 2844.

990 Ibid., 2847 and 2852.

991 HTK, Bijlagen 2002-2003, 28473. 158e and 33, 6.

992 P.J.G. Kapteyn, *Een Europese grondwet: retoriek en realiteit* (Amsterdam: Vossiuspers UvA, 2002) 26. Kahn teaches in the field of constitutional law and theory, international law and cultural theory and philosophy at Yale Law School.

993 HTK/HEK, Bijlagen 2002-2003, 28473, nrs. 158e/33, 11.

994 Ibid., 8.

995 Ibid.

996 See, among others, Frans Timmermans (PvdA) and Erik Jurgens (PvdA) in HTK/HEK, Bijlagen 2002-2003, 28473, no's. 158e/33, 8 and 11; Harry van Bommel (SP) HTK, 2002-2003 (24-06-2003) 4654.

997 In Dutch parliamentary history this event is known as 'the night of Wiegel' – named after the VVD member Hans Wiegel who was crucial in rejecting the bill and became thus responsible for the fall of the cabinet.

998 NB: The label 'constitution' was used here again instead of the official term 'constitutional treaty.'

999 HTK, Bijlagen 2002-2003, 28885. 2. Draft of the bill various times amended. See HTK, Bijlagen 2002-2003, 28885, no's 6, 7, 10 and 20.

1000 HTK, Bijlagen 2002-2003, 28885.3.

1001 Ibid., 7-8.

1002 See HTK, Bijlagen 2002-2003, 28885.3, 1 and HTK, 2003-2004 (20-11-2003) 1862.

1003 HTK, 2003-2004 (20-11-2003) 1862.

1004 HTK, Bijlagen 2002-2003, 28885.8, 1-2.

1005 Ibid.

1006 Van der Staaij (SGP) and Slob (CU) in HTK, 2003-2004 (20-11-2003) 1862

1007 HTK, Bijlagen 2002-2003, 28885.8, 3-4; HTK, 2003-2004 (18-11-2003) 1734, 1736, 1745; HEK, 2004-2005 (18-01-2005) 586.

1008 HTK, 2002-2003 (13-03-2003) 3263.

1009 Ibid.

1010 HEK, 2003-2004 (04-11-2003) 238 and 250.

1011 Ibid., 231.

1012 Ibid., 225

1013 Ibid., 248.

1014 See, for instance, Konhstamm (D66) in HEK, 2003-2004 (04-11-2003) and Balkenende in HTK, 2003-2004 (23-06-2004) 5571-5572. See also Balkenende in HTK, 2002-2003 (24-06-2003) 4665.

1015 See State Secretary Nicolaï (VVD) in HTK/HEK, Bijlagen 2002-2003, 28473, no's. 158e/33 51and idem in HEK, 2002-2003 (17-06-2003) 895. Without entering into the institutional details, the Council of State in its preliminary advice indicated that, so far, it did not see any conflict between the Dutch constitution and the drafting of a European constitutional treaty. They saw the draft-Constitution as the tailpiece of a historical development: 'The present draft-Constitution proposed within the framework of the Convention can be considered the provisional final stage of a development of the past 50 years. In view of this a violation of the national constitutional system is out of the question.' See HTK, Bijlagen 2002-2003, 28473, nr. 35, 3.

1016 HTK, 2003-2004 (18-12-2003) 2827.

1017 Bernard Bot in an interview with the author on 24 April 2009.

1018 Minister of the Interior Thom de Graaf (D66) in HTK, 2003-2004 (20-11-2003) 1882 and 1886.

1019 HTK, Bijlagen 2002-2003, 28885.A, 2. Original text: '*in de Europese Grondwet het […] handvest van grondrechten zal zijn opgenomen […] Grondrechten zijn een wezenlijk element van een Grondwet in een democratische rechtsstaat. Voorts komt met de aanvaarding van het verdrag tot vaststelling van een Grondwet voor Europa één Europese «Grondwet» tot stand, waarin de (gewijzigde) institutionele verhoudingen en de besluitvorming […] zullen zijn geregeld.*

1020 Ibid.

1021 Ibid., 3.

1022 Compare Article 91, subsection 3 of the Dutch constitution that was also modelled on this principle.

1023 HTK, Bijlagen 2002-2003, 28885.A, 3.

1024 Ibid.

1025 Willem Pedroli, head of the Unit of Constitutional Affairs of the Ministry of the Interior, in an interview with the author on 9 February 2011

1026 The Upper House had postponed the debate until the IGC on the new treaty had been closed.

1027 See: www.novatv.nl/page/detail/nieuws/7550/Europese+grondwet+ondertekend+in+Rome (19-12-2012).

1028 Treaty Establishing a Constitution for Europe, Official Journal 2004/C 310/01. The full text of the treaty can be viewed at: http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2004:310:SOM:en:HTML (19-12-2012).

1029 See, for instance, F. de Vries, 'De Staat van Europa' in F. Amtenbrink en S.B. Van Baalen, *Europa; eenheid in verscheidenheid? Groningse beschouwingen over de Europese Grondwet* (Den Haag 2005) 55-68, here 63-66; L.W. Gormley, 'Some comments on the institutional structure in the Constitution for Europe' in: ibid, 83-95, here 95; J.W. Sap, *De instellingen en de Europese grondwet* (Amstelveen 2006) 13.

1030 With regard to the issues regarding the financial perspectives and the stability pact a so called *passerelle* was introduced: the Council could switch to a QMV decision only when the Council had unanimously decided to do so. See also HTK, 2003-2004 (23-06-2004) 5572.

1031 HTK, 2003-2004 (23-06-2004) 5578.

1032 Eventually, under pressure of the states that opposed such a reference as a matter of principle, the more neutral wording of 'drawing inspiration from the cultural, religious and humanist inheritance of Europe' was chosen. See the preamble of the Treaty Establishing a Constitution for Europe, 2004/C 310/01. The full text of the treaty can be viewed at: http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2004:310:SOM:en:HTML (Last visit 19-12-2012).

1033 See, for example, HTK, 2003-2004 (23-06-2004) 5577. A diplomatic 'turn' on the concept of a permanent Chair of the Council had taken place already in the final phase of the Convention. In June 2003, the government stated it could accept such a permanent Chair as

long as 'competences of a completely new character'. See HEK/HTK, (2002-2003) 28473, 158e/33, 27.

1034 HTK, Bijlagen 2004-2005, 30 025 (R 1783) 3, 5.

1035 Ibid., 5-6.

1036 Ibid., 17.

1037 Ibid., 18-20.

1038 The EU received exclusive competences in the fields of the customs union, competition rules necessary for the functioning of the internal market, the monetary policy in Euro countries, the conservation of marine biological resources in relation to the common fishery policy and the common commercial policies.

1039 HTK, 2004-2005, 30 025 (R 1783) 3, 18-19.

1040 Ibid., 17-20.

1041 Ibid., 17.

1042 HTK, Bijlagen 2002-2003, 28885.A, 3 and HTK, 2004-2005, 30 025 (R 1783) 3.

1043 HTK, Bijlagen 2004-2005, 30 025 (R 1783) 4, 15.

1044 Ibid.

1045 Ibid.

1046 Van Baalen (VVD) in HTK, 2003-2004 (23-06-2004) 5556.

1047 Ibid., 5561.

1048 In 2004, Geert Wilders had left the VVD after a dispute on, among other things, the possibility of the accession of Turkey to the EU. In 2006, he established the Partij Voor de Vrijheid (PVV).

1049 HTK, 2003-2004 (23-06-2004), 5569.

1050 Ibid. See also the 2001 report that is referred to: J. Wallage, *In dienst van de democratie. Het rapport van de Commissie Toekomst Overheidscommunicatie* (August 2001) 31 via www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2007/09/20/in-dienst-van-de-democratie-het-rapport-van-de-commissie-toekomst-overheidscommunicatie.html (14-10-2012). On the issue of the campaign, the author gratefully made use of the (unpublished) Master Thesis of Ruud de Jong, *Een kabinetscampagne in constitutionele mist. Het falen van de campagne voor de Europese grondwet in 2005 verklaard*, (Groningen University, 2009).

1051 See http://ec.europa.eu/public_opinion/archives/eb/eb62/eb62first_en.pdf, p.8. (last visit 19-12-2012) In the *Eurobarometer*, that exists since 1973, the European Commission analyses public opinion trends in all EU Member and Candidate States.

1052 http://ec.europa.eu/public_opinion/archives/eb/eb62/eb62first_en.pdf, p.25. (last visit 19-12-2012).

1053 G. Voerman, 'De Nederlandse politieke partijen en de Europese integratie' in K. Aarts en H. van der Kolk (eds.), *Nederlanders en Europa. Het referendum over de Europese grondwet* (Amsterdam 2005) 44-63, here 56.

1054 Robert Giebels et al, 'Als we het nou maar beter uit kunnen leggen: hoe de ja-campagne nooit van de grond kwam', *NRC Handelsblad Zaterdags Bijvoegsel* (04.06.2005).

1055 Ruud de Jong, *Een kabinetscampagne in constitutionele mist. Het falen van de campagne voor de Europese grondwet in 2005 verklaard*, (unpublished)

master thesis (Groningen University, 2009), 48.

1056 De Jong, *Een kabinetscampagne in constitutionele mist,* 48-49.

1057 Ibid., 51 and the parliamentary evaluation of the communication of the government in the campaign in HTK, 2005-2006, 29993.24, 6-7.

1058 De Jong, *Een kabinetscampagne in constitutionele mist,* 54-55.

1059 S.n., 'Donner vreest oorlog bij 'nee' EU-grondwet', *Trouw*, (18.04.2005).

1060 Ibid.

1061 Kees Versteegh, 'Premier: "Nee tegen Grondwet verzwakt positie Nederland" in *NRC Handelsblad* (28.04.2005). The full text of the speech of 8 May 2005 of Jan Peter Balkenende can be viewed at the website of the municipality eijsden-margraten: www.eijsden-margraten.nl/bloesem-van-het-zuiden/amerikaanse-begraafplaats_41185/item/bezoek-amerikaanse-president-george-w-busch_29539.html#titel29539 (last visit 19-12-2012).

1062 *De Telegraaf (*19.05.2005).

1063 See, for instance, the reactions of readers on the remarks Piet Hein Donner, as published by Ruud de Jong in thesis *Een kabinetscampagne in constitutionele mist,* 60; the editorial in *NRC Handelsblad* of 09.05.2005 and the reaction of campaigning strategist Alex Klusman in the Dutch current affairs programme *Twee Vandaag* on 01.06.2005.

1064 See, for instance, the campaign flyer of the SP '1 Juni: Euro-referendum. Weet waar je ja tegen zegt!' and the article on the website of the SP 'Wat gebeurt er als we in meerderheid tegen deze Europese grondwet stemmen?' via: www.sp.nl/nieuws/actie/grondwet/whatif.shtml (last visit16-10-2012). For the CU comment on the governmental pleas, see www.nd.nl/artikelen/onbekend/-nee-chaos-in-eu-of-ruimte-voor-bezinning- (last visit 19-12-2012).

1065 Bernard Bot in an interview with the author on 24 April 2009.

1066 On 20 May, the polls even showed a majority of 66% of those who planned to vote, to vote 'No' in the referendum. For more details on the course of the polls in the last month before the referendum, see: www.parlement.com/9353000/1f/j9vvhy5i95k8zxl/vgvqpnqs5qbn (last visit 19-12-2012).

1067 'Nor was I hopeful of a good ending. That it would turn out that badly, was a thing nobody in the government had thought', according to Bernard Bot in the interview with the author on 24 April 2009.

1068 In the Lower House meeting of 2 June 2005, the Dutch government announced to withdraw the bill of approval, see HTK, 2004-2005 (02-06-2005) 5134-5177.

1069 See among others: K. Aarts, H. van der Kolk (eds.), *Nederlanders en Europa: het referendum over de Europese grondwet*, Amsterdam: Bakker, 2005; P. Grinsven, M. van Keulen, J. Rood, *Over verkiezingen, politisering en het Nederlands Europa-beleid*, Den Haag: Nederlands Instituut voor Internationale Betrekkingen Clingendael, 2006; 'R. Lubbers (ed.), *'Een oorverdovende stilte…': over de plaats van Europa in de Nederlandse politiek*, (Amsterdam: Vereniging Democratisch Europa, 2007).

1070 Hollander, 'The Dutch intellectual debate on European integration,' 215-217.

1071 Boris van der Ham, *Voortrekkers en baanbrekers. Twee jaar na het referendum Nederland in Europa* (Amsterdam 2007).

1072 S.n., 'La boîte à outils du traité de Lisbonne, par Valéry Giscard d'Estaing' *Le Monde* (27.10.2007) see: www.lemonde.fr/idees/article/2007/10/26/la-boite-a-outils-du-traite-de-lisbonne-par-valery-giscard-d-estaing_971616_3232.html (last visit 19-12-2012). This picture was also supported by various public intellectuals in the Netherlands. See, for instance, P. Kapteyn, *In de spagaat: tussen Europa en Nederland: tien jaar Europa-debat Vereniging Democratisch Europa* (Amstelveen : EON pers, 2009), 9.

1073 HTK, Bijlagen 2007-2008, 31384, (R1850) 3, 9.

1074 Ibid. See also HTK, 2007-2008, 31091.4, 9-10.

1075 HTK, Bijlagen 2007-2008, 31384, (R1850) 3, 9.

1076 These abbreviations, respectively, stand for European Financial Stability Facility and European Financial Stability Mechanism.

1077 A 85% majority in favour of such help is sufficient.

1078 On 12 September 2012 the court ruled that the ESM-treaty was compatible with the German Constitution. It, however, stipulated certain additional conditions for German participation in the European emergency fund.

1079 See HTK, 2011-2012, 33221.2, 1 for the Bill of approval and the proposed procedure of approval.

1080 See the ever more critical reporting in the various newspapers, journals and current affairs programmes in the Netherlands.

1081 In this context the works of the young legal scholar and historian Thierry Baudet – in particular his thesis *De aanval op de natiestaat* (2011) and various articles in which he questions the legitimacy of judgements of the European Court of Human Rights – have caused consternation in the Dutch press.

1082 To illustrate, on 10 December 2012 it was reported in the *NRC Handelsblad* that 'The Hague does not want any *faits accomplis* anymore.' Mark Kranenburg and Erik van der Walle, 'Den Haag wil geen voldongen feiten meer' in *NRC Handelsblad* (10.12.2012).

1083 This as a result of the memorandum *Parlement aan zet* (2006), written on request of parliament.

1084 For the recommendation see the memorandum *Bovenop Europa* (2011), 24-25. The full text of the memorandum can be downloaded via: https://zoek.officielebekendmakingen.nl/blg-107834.pdf. (last visit 19-12-2012).

1085 See, for instance, the reactions of the parties of the political mainstream to the proposal of SGP party leader Kees van der Staaij to adjust Article 91, subsection 3 to such an extent that henceforth all European treaties would need a two-thirds majority. See the dossier HTK, Bijlagen 2006-2007, 30874 (R1818). Moreover, little has been done with the 2010 advice of the Constitutional Committee Thomassen to adjust Article 91, subsection 3. Staatscommissie Grondwet, *Rapport Staatscommissie Grondwet* (2010).

1086 See the motion Van der Goes van Naters/Serrarens. HTK, Bijlagen 1947-1948, 761.2

1087 Norbert Schmelzer (KVP) in HTK, 1971-1972 (14-09-1972) 4302.

1088 Josje den Ridder and Gera Arts, 'Gevraagd: een spannende en constructieve discussie over de EU. De publieke opinie en spanningen in de relatie tussen burgers en de EU' in: Raad voor het Openbaar Bestuur (Rob), *Europa, burgerschap en democratie. Over de gespannen relatie tussen burgers en Europa en mogelijkheden om die te ontspannen* (Den Haag: Rob, 2012) 15-28, here 16-20.

English summary

The Incoming Tide. Dutch Reactions to the Constitutionalisation of Europe (1948-2005) aims to solve the question of how the relation between the Netherlands and Europe came under pressure. Widely renowned as one of the Founding Fathers of the European Coal and Steel Community and as one of the most loyal participants of European integration in general, the Netherlands surprised friend and foe when on 1 June 2005, its people rejected by a substantial majority the European Constitution. Until now, no satisfactory explanation has been given for this.

This study offers a new, long-term perspective. Based on a wealth of primary sources – i.e. parliamentary accounts, Council of State advice and interviews with key figures in the process – and a rhetorical approach, it is argued that the germ for the gap between the Dutch political elite and society at large, which became manifest on 1 June 2005, was already latently present within the identity of the Dutch polity. It resulted from the ideas, premises, convictions, and beliefs, shared by a political majority and cherished as part of its group identity, on (1) the position of the Netherlands in the wider world; (2) the foreign policy that befitted this position; and (3) the democratic sacrifices that were needed to guarantee it. These essential elements of what could be summarised as the mindset of the political elite, have led to blind spots within the political community with regard to its approach to, and expectations of the process of European integration. Blind spots that, in turn, may clarify the development of the gap between those who represent and those that were supposed to be represented.

It is argued then that an exceptionally strong identification of the Dutch political elite with the process of European integration in its early years, eventually led to the erosion of the democratic legitimacy of the process of European integration. Though hidden at first, this process gradually became manifest in a widening gulf between on the one hand the political elite that continued to support the constitutionalisation of Europe, and on the other hand the Dutch citizens, who were increasingly dissatisfied with national decision making on European integration. Blinded by their conviction that European integration

should proceed because it was a goal that benefitted the economic and international political interests of the Netherlands, the political leaders of the Netherlands failed to become aware in time of the diminishing support for a European Constitution. Finally, when the Dutch people were asked to give their vote on the Treaty Establishing a Constitution for Europe, a majority gave a harsh verdict. It protested against European integration and called a halt to the seemingly unstoppable legal logics by which it had developed in the course of time.
The full argument is produced in six chronological chapters in which the developments in the process of European integration are discussed together with developments in the national political domain and the perception of the national political and intellectual elite of this process.

In the first chapter, a study of the crucial elements of the Dutch constitutional reform of 1953 demonstrates that, based on a historically developed view on the position and role of the Netherlands on the international stage, a considerable political majority was willing to open up the Dutch constitution for the process of European integration. Subsequently, in chapters two to four, on the basis of an examination of the parliamentary debates on the coming about of the European Defence Community (1953), the European Economic Community (1957), the Merger Treaty (1965), the Single European Act (1986), the accessions of the United Kingdom (1972), Greece (1981), Spain and Portugal (1986), and the introduction of direct elections for the European Parliament (1979), it is observed that throughout the process of European integration the political majority's consensus that an attitude of fundamental openness came before a strong democratic hold, was preserved, strengthened and protected.

Subsequently, chapters five and six show that when from the second half of the 1980s onwards a full-dress European Union came into view, the political consensus among the political majority on European integration, as it had developed since 1948, became more and more contested both in and outside parliament. The political mainstream that had held the political power for decennia since 1948, however, failed to act truly and structurally upon the growing discontent. Estrangement developed between a governmental elite that kept justifying ongoing European integration on the basis of a political tradition in which instrumental internationalist reasoning with regard to economic and security interests came before national political sovereignty, and the Dutch people who increasingly desired to prioritise otherwise. In June 2005, the governmental elite paid the price for that.

Nederlandse samenvatting

Lange tijd oogde de verhouding tussen Nederland en het Europese integratieproces weinig complex. Als één van de grondleggers van de Europese Gemeenschap voor Kolen en Staal en voorvechter van verdere eenwording in de decennia die volgden, bouwde het land aan een reputatie van trouwe bondgenoot in het proces van Europese integratie. Vanuit dit perspectief verbaasde het vriend en vijand toen het Nederlandse volk op 1 juni 2005 de Europese Grondwet met een forse meerderheid afwees. Tot op heden is voor deze opmerkelijke gebeurtenis geen bevredigende verklaring gevonden. *The Incoming Tide. Dutch Reactions to the Constitutionalisation of Europe* (1948-2005) doet hiertoe een nieuwe poging. Vanuit een historisch, lange termijn perspectief ontrafelt het onderzoek hoe de verhouding tussen Nederland en Europa onder druk is komen te staan.

De auteur laat zien dat de kiemen van de veelbesproken kloof tussen het Nederlandse volk en de politieke vertegenwoordiging daarvan, zoals die zich op 1 juni 2005 openbaarde, al lange tijd latent aanwezig waren in de identiteit van de politieke gemeenschap. Hierbij baseert zij zich op een retorische analyse van een scala aan primaire bronnen – parlementaire verslagen, adviezen van de Raad van State en interviews met sleutelfiguren in het proces – die eerder onbestudeerd bleven. Deze kiemen kwamen, ten eerste, voort uit binnen het politieke domein breed gedeelde ideeën met betrekking tot de Nederlandse positie in de wereld. Ten tweede, uit vooronderstellingen, overtuigingen en geloofsartikelen aangaande het buitenlands beleid dat bij deze positie hoorde. En, ten derde, uit opvattingen betreffende de democratische offers die nodig waren om die positie te garanderen. Deze kernelementen van, wat kan worden omschreven als, de 'mindset' van de politieke elite, leidden tot blinde vlekken binnen de politieke gemeenschap met betrekking tot haar benadering en verwachtingen van het proces van Europese integratie; blinde vlekken die op hun beurt de ontwikkeling verklaren van een kloof tussen hen die vertegenwoordigden en hen die vertegenwoordigd werden.

The Incoming Tide stelt dat de aanvankelijk buitengewoon sterke identificatie van de Nederlandse politieke elite met het Europese

integratieproces uiteindelijk de democratische legitimiteit van dit proces uitholde. Hoewel deze ontwikkeling zich lange tijd aan het zicht onttrok, toonde zij zich uiteindelijk in de vorm van een groeiende afstand tussen een politieke elite die de constitutionalisering van Europa bleef steunen en de Nederlandse burgers die zich in toenemende mate zorgen maakten om het verlies van grip op Europese besluitvorming. Handelend vanuit de overtuiging dat Europese integratie wel voort móest schrijden om de economische en politieke belangen van Nederland te waarborgen, verzuimden de Nederlandse politieke leiders de slinkende steun voor de Europese grondwet tijdig te onderkennen. Uiteindelijk, toen het Verdrag tot Vaststelling van een Grondwet voor Europa, per referendum, aan het Nederlandse volk ter goedkeuring werd voorgelegd, liet een ruime meerderheid geen twijfel bestaan. Het protesteerde tegen Europese integratie en de ogenschijnlijk niet te remmen juridische en politieke logica waarmee dit proces zich sinds 1948 had voltrokken.

Het betoog ontvouwt zich in zes chronologische hoofdstukken waarin ontwikkelingen in het Europese integratieproces worden besproken in samenhang met ontwikkelingen in het nationale politieke domein en de perceptie van de nationale politieke en intellectuele elite op dit proces.

In het eerste hoofdstuk laat een analyse van de cruciale elementen in de Nederlandse grondwetswijziging van 1953 zien dat, op basis van een historisch ontwikkeld perspectief op de positie en rol van Nederland op het internationale toneel, een politieke meerderheid bereid was om de Nederlandse Grondwet open te stellen voor het Europese integratieproces. Vervolgens laten de hoofdstukken twee tot vier zien dat gedurende dit proces de opvatting dat een fundamenteel open houding ten opzichte van Europese integratie voorrang verdiende boven sterke nationale democratische grip op dit proces werd gekoesterd, versterkt en beschermd. Hier baseert de auteur zich op bestudering van de parlementaire debatten rond de totstandkoming van de Europese Defensie Gemeenschap (1953), de Europese Economische Gemeenschap (1957), het Fusieverdrag (1965), de Europese Akte (1986), de toetreding van het Verenigd Koninkrijk (1972), Griekenland (1981), Spanje en Portugal (1986) en de introductie van directe verkiezingen voor het Europees Parlement (1979).

Hoofdstukken vijf en zes, ten slotte, laten zien dat vanaf de tweede helft van de jaren 1980 – toen de realisatie van de Europese Unie in zicht kwam – Europese besluitvorming in toenemende mate werd betwist. Echter, de politieke *mainstream* van Christen- en sociaal-democraten en liberalen, die sinds 1948 het land in wisselende samenstelling

had bestuurd, verzuimde om daadwerkelijk en structureel te anticiperen op de groeiende ontevredenheid over de totstandkoming van een vierde bestuurslaag waarop Nederlandse burgers en hun politieke representanten steeds minder grip hadden. Het gevolg was vervreemding tussen de bestuurlijke elite die voortschrijdende Europese integratie bleef rechtvaardigen op basis van een beleidstraditie waarin instrumenteel, internationalistisch belangen-denken voorrang kreeg boven nationale politieke soevereiniteit en het Nederlandse volk dat in toenemende mate aangaf haar prioriteiten anders te stellen. In Juni 2005, betaalde de bestuurlijke elite van Nederland hiervoor de prijs.

About the author

After getting her MA in political history (with distinction) in December 2007, Jieskje Hollander (1983) started a PhD track at the European Law department of Groningen University. Her research *The Incoming Tide. Dutch Reactions to the Constitutionalisation of Europe* was funded by the Netherlands Organisation for Scientific Research (NWO). Intrigued by the peculiarities of national democracy, in February 2012 Hollander decided to move from the academic to the political domain. She now works for the mr. Hans van Mierlo Foundation; the think tank that aims to feed and deepen the social-liberal ideas of the political party D66.